

**ISLE OF WIGHT COUNCIL**

**WIGHT LEISURE EXTERNALISATION**

**REPORT OF FURTHER REVIEW**

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# WIGHT LEISURE EXTERNALISATION

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# WIGHT LEISURE EXTERNALISATION

## 1 EXECUTIVE SUMMARY

### 1.1 Introduction

#### 1.1.1 Decision of Executive 4<sup>th</sup> June 2003

1.1.2 The Executive resolved that the proposed actions by the Monitoring Officer and Chief Financial Officer be endorsed.

1.1.3 Those actions were that there should be a short investigation to establish:

- The amount and legitimacy of spending on this project to date;
- Whether any recommendations can be made to the Council in relation to either the corporate or service specific management of the externalisation process.

#### 1.1.4 Scope of the Review

1.1.5 This report does not seek to duplicate the previous review, which was aimed at providing a report that would set the context in which a decision regarding the externalisation of Wight Leisure could reasonably be made. This report concentrates predominantly on three major issues, in order to set out a diagnosis of past weaknesses, linked to recommendations for improvement:

- Key Decisions by Officers and Elected members of the Council' including significant procurement decisions, and decisions regarding processes and protocols;
- Spending and spending commitments by the Community Development Department including allocation of budget to the project, quotations for services provided, and actual expenditure and commitments to date.
- Relationships with Third Parties including the Council's advisors, WLL's advisors, and other relationships;
- General issues.

The detailed terms of reference are set out as Appendix A.

### 1.2 Recommendations

1.2.1 Some 40 detailed recommendations are set out in section 8 of the report. They are, for ease of reference and response, grouped under the following headings:

- 1.2.2
- 8.1 Previous Recommendations
  - 8.2 Externalisation Project
  - 8.3 Directorate of Education and Community Development

- 8.4 Corporate Governance
- 8.5 Expenditure to Date
- 8.6 Individual Conduct and Capability

Some of the recommendations have been implemented as the report was drafted and redrafted. Others reflect changes, of relevance to this report, which were planned in any event. To an extent this reflects the long gestation of the report, but also is a reflection of a Council which is rapidly developing its corporate governance arrangements.

### 1.3 Summary of Conclusions

- 1.3.1 Conflicts of interest arose at various stages of the project. Such conflicts were not recorded as required by financial regulations, but the Council was, albeit not systematically and formally, aware of both potential and actual conflicts as they arose and, consequently, some appropriate advice and actions were taken. There is no suggestion of impropriety by any individual.
- 1.3.2 No systematic provision was made for the proper sharing of information and advice, and the introduction of the Project Board must rectify this deficiency through the adoption of a communication plan as part of the project management approach.
- 1.3.3 The Executive had approved a business case based on estimated expenditure of £50,000, £25,000 for client and £25,000 for the “contractor”. Further approval, increasing the client budget to £50,000, was given in August 2002 by the Strategic Director of Finance and Information, under delegated authority.
- 1.3.4 The appointment of advisors was consistent with the Council’s Contract Standing Orders, and quotations were within the allocated budgets.
- 1.3.5 Total expenditure from 2001 to date has amounted to in excess of £81,000. Of this amount £50,000 was clearly authorised by members and a further £25,000 under powers delegated to the then Strategic Director. A reference in two subsequent reports to the Executive, in May 2002, to £20,000 budgeted costs of externalisation is unhelpfully phrased, but may be taken as a further authorisation of the same expenditure.
- 1.3.6 Of the £81,000 expenditure the following items are questionable on the following grounds:
  - c£7,000 of the £32,000 spent on “contractors” costs is in excess of that estimated in the business case reported to Members on 30 November 2000 and may be in excess of member authorisation.
  - The extent to which all of the c£32,000 expenditure incurred on behalf of WLL was lawful under s19 Local Government (Miscellaneous Provisions) Act 1976 and/or Pt 1 Local Government Act 2000
- 1.3.7 Although the decision making in relation to the externalisation process is criticised in the report, there is no conclusion that the expenditure was unlawful
- 1.3.8 Counsel’s advice has been taken on the extent of the Council’s powers. That advice is reproduced as Appendix F

- 1.3.9 A failure to adequately set out and record the reasons for decisions taken by elected members was a common weakness within the authority in the past, the arrangements have improved but are capable of further development.

### **1.4 Acknowledgements**

The authors would like to thank all those interviewed for their co-operation and assistance, and to Grainne O'Rourke, Head of Legal Services and Monitoring Officer of New Forest District Council for providing external challenge.

## **2 CONTEXT AND BACKGROUND**

### **2.1 Background**

#### **2.1.1 Meeting of Executive 4<sup>th</sup> June 2003**

2.1.1.1 The Executive received a report from the Portfolio Holder for Tourism and Leisure arising from an independent review of the processes adopted to deliver the Wight Leisure Externalisation project.

2.1.1.2 The Executive endorsed the proposed actions by the Monitoring Officer and the Chief Financial Officer to undertake a short investigation with Terms of Reference as shown below.

### **2.2 Terms of Reference for the Review**

#### **2.2.1 Objectives**

2.2.1.1 To establish the amount and legitimacy of spending on the project to date.

2.2.1.2 Whether any recommendations can be made to the Council in relation to either corporate or service specific management of the externalisation process.

2.2.1.3 The full terms of reference are set out in Appendix A.

#### **2.2.2 Approach to the Review**

2.2.2.1 The review is not intended to duplicate previous work undertaken, but is by, and on behalf of, the Monitoring Officer and the Chief Financial Officer in discharging their functions and with regard to the report considered by the Executive on 4<sup>th</sup> June 2003.

2.2.2.2 It seeks, therefore, to concentrate on the following issues:

- Key decisions by Officers and Elected Members;
- Spending and spending commitments by the Community Development Department (including Wight Leisure);
- The future procurement and use of external advisors in the restarted externalisation process;
- The future corporate management of the externalisation project;
- Ongoing and future relationships with commercial (including external advisors) and public partners.

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- 2.2.2.3 The review has been restricted to the Wight Leisure Externalisation project, and has, therefore, been restricted to interviews with those identified under Appendix C, and to detailed examination of reports to the Executive and the Economic Development, Planning, Tourism and Leisure Services Select Committee, together with the related Minutes, and when necessary the transcripts of those meetings. Those interviewed, or otherwise in a position of knowledge have been invited to comment on successive drafts of the report
- 2.2.2.4 The report relies, in places, on standards of good practice which have emerged since the transactions in question. This is not done in order to discredit the process, but in order to use those emerging standards as a tool to understand why the process went awry.
- 2.2.2.5 Similarly, the use of an externalisation model as a paradigm is as a diagnostic device, rather than as an assertion that the model is the only possible method of delivering such a project
- 2.2.2.6 Including discussion of such benchmarks also gives an insight into how far (and how quickly) the authority has come in improving it's approach to such issues as strategic procurement



### **3 KEY DECISIONS BY OFFICERS AND ELECTED MEMBERS OF THE COUNCIL**

#### **3.1 Significant Procurement Decisions**

##### **3.1.1 Advisors to Wight Leisure or Wight Leisure Limited**

3.1.1.1 In response to decision of the full Council on the 15<sup>th</sup> December 2000, Leisure Partners Limited were appointed, in April 2001, to do the following:

- Develop Business Plan, Registration of WLL, Assessment of Business Documentation and Business Systems Set-up;
- Business System Establishment, Support Service Strategy and Transfer.

##### **3.1.2 Other Procurements for WLL**

3.1.1.2 On 27 August 2002, the Executive resolved that: "... negotiations with Wight Leisure Limited continue with a view to completion of the transfer by 31<sup>st</sup> December 2002."

3.1.1.3 Business Systems and related training were purchased by Wight Leisure, in order to be ready for functioning as WLL in preparation for the transfer scheduled initially for 1 October 2002, and later for 31<sup>st</sup> December 2002. Some of the expenditure, for example on the SAGE accounting system has procured benefits for the service irrespective of the externalisation process

##### **3.1.3 Advisors to the Client**

3.1.3.1 PMP Consultancy was appointed in July 2001, a copy of the brief to PMP is attached as Appendix G

#### **3.2 Decisions on Approach to the Externalisation Approach**

##### **3.2.1 Prior to 7<sup>th</sup> May 2002**

3.2.1.1 The Council had previous experience of similar externalisation projects during the early 1990's and had apparently adopted the approach chosen for the Wight Leisure externalisation in those cases. However, it failed to acknowledge two key differences from those previous externalisations:

- The precedents established by the courts in interpreting Section 19(3) Local Government (Miscellaneous Provisions) Act 1976, and
- The extensive litigation, during the 1990's, in relation to management buyouts as noted by the Council's legal advisors, Eversheds in 1998.

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- 3.2.1.2 The externalisation project was stopped during 1998, in order to complete the Compulsory Competitive Tendering (CCT) process.
- 3.2.1.3 This meant that the type of split between ‘client’ and ‘contractor’ as described in Tony Hall’s earlier report was adopted, as a continuation of the structure in place in 1998. The reason for that type of split was intended to demonstrate to commercial bidders for the contract that the process was truly competitive. This split was, apparently, not reviewed after the completion of the CCT process, and continued as the model for the externalisation project, despite the change in structures following the end of the CCT regime in 1999.
- 3.2.1.4 The Wight Leisure Working Party was established on 5<sup>th</sup> August 1999, and chaired by , the Strategic Director of Finance and Information of the Council. The Working Party was, in effect, a Project Board, and included at that time the client, contractor and a further Finance Officer.
- 3.2.1.5 The Working Party undertook a review of the options, with assistance from consultants Leisure Futures, for the provision of Leisure Services within the Isle of Wight. The recommendations of the appraisal were endorsed by CMT but rejected by the Executive in November 2000. The Executive agreed to recommend to the full Council that the externalisation of Leisure Services to a Not for Profit Organisation be approved. The public record of the minutes of that meeting gives no indication of the discussion that took place in arriving at the decision. There is therefore no record of the reasons for the decision, which was made against the recommendation set out, with some supporting reasons, in the report.
- 3.2.1.6 In 2000 the Executive was still a committee of the Council under s101 Local Government Act 1972 and, therefore, Full Council was competent to take this decision. The Full Council adopted the recommendations of the Executive without any record of having receiving any further information to support the decision. The failure to identify and record the reasons for decisions by members has emerged as being a common weakness within the authority at that time.
- 3.2.1.7 Between October 1999 and March 2001, the Working Party was engaged in developing a framework for the externalisation proposals having expanded it’s numbers to include Legal, Property and the Personnel representatives.
- 3.2.1.8 It is recorded that on 11<sup>th</sup> April 2001 that the Working Party was informed that Leisure Partners had been appointed to advise the Trust. Representatives of Leisure Partners were invited to attend that meeting.
- 3.2.1.9 The Working Party established a timetable or project plan, and, in July 2001, PMP Consultants were appointed to provide support to the client activity.
- 3.2.1.10 On advice from the then Acting Legal Services Manager, The Managing Director of Wight Leisure was excluded from the Working Party with effect from 9<sup>th</sup> August 2001 and took no part in drafting, preparing or presenting reports to the Executive after that date. This advice, was, no doubt, in response to the advice received from Lawrence Graham in June 2001, that “the potential for conflict of interest should be minimised as far as possible...” The MD Designate of WLL could not be part of the Council’s policy development team.

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3.2.1.11 On 21<sup>st</sup> August 2001, the Executive agreed to defer the Externalisation Project pending completion of the Best Value Review. This was two months after the incorporation of Wight Leisure Limited. The fact of incorporation was reported to the Executive on 21 August 2001.

3.2.1.12 The Working Party appeared at this point to cease, and did not reconvene after the Project recommenced in May 2002. The extent to which the Select Committee was able to , and should have, replaced the Working Party is discussed below.

### **3.2.2 7<sup>th</sup> May 2002 to date:**

3.2.2.1 In the wake of the Best Value Review, the Executive, on 7<sup>th</sup> May 2002, resolved that: “the externalisation of the delivery of the services to a Not for Profit Distributing Organisation be approved.” This decision was taken prior to the formal report of the Audit Commission on the best Value Review, which is dated October 2002. A timetable was established by a further report to members in on 21 May 2002.

3.2.2.2 The Audit Commission Report reads (at paragraph 196) “The accomplishment of the improvement plan is to some degree dependent on the successful transfer of Wight Leisure to NPDO status, and it is of concern that the council has no contingency plans to ensure service improvements should this not happen.”

3.2.2.3 That report also states “the Council has proved successful at attracting funding for areas of deprivation, such as funding of a new fitness centre at the Westridge Centre. The Council’s capital programme, SRB and a loan from Leisure Partners will fund this £650,000 project”. The extent to which this statement was accurate was analysed in the previous report by Tony Hall, and will be a matter of some controversy as it is not clear that funds for this project were so approved.

3.2.2.4 The project recommenced in its previous style, even though the entity WLL was in existence. The Head of Community Development and Tourism, assumed the role of Project Manager with a remit to deliver the Executive’s resolution to the existing methodology. The same client contractor split was adopted, and the existence of WLL although known, was not the subject of any advice from any source. The role of PMP Consultants was re-confirmed.

3.2.2.5 Business Plans were submitted on behalf of WLL, and each was challenged by PMP on behalf of the Council. That process, conducted at arms length from the Wight Leisure staff led to both conflicts of interest (as council employees were undertaking work on behalf on WLL without explicit safeguards) and personal tensions as various parties failed to understand the roles which they and others were being asked to undertake, and therefore came to question the competence and/or commitment of others. The timeliness of delivery of the business plans (and, equally, the quality of the challenges to the substance of those plans) caused, and reflected, some of these tensions. This report concludes that this phenomenon was, largely, a symptom of the systematic failures. Specifically, the lack of clear and shared understanding of what was expected from and by each party has its roots in the absence of a detailed project plan.

3.2.2.6 The briefs to PMP (attached as Appednix G) and Leisure Partners are two examples of this phenomenon. In the case of PMP, the brief was originally conceived of as a narrow and technical brief, designed to assist the council in assessing the quality of the business

plan put forward by WLL. However, the need for more general advice on the process, which became increasingly obvious to some of the key players, was not reflected in a clear and shared redrafted brief which would have made explicit the changing role. Whether or not PMP delivered on their original brief is of significant importance to some of the individuals involved in the process. This report concludes that the more significant issue was whether that brief was the right one at all material times, and further concludes that it was not. Similarly, the role of Leisure Partners, as owners of WLL and advisors to the process is (at least with the benefit of hindsight) not a desirable arrangement

3.2.2.7 There was, and remains, a need for external advice in order for the council to deliver a project of this type. Briefs for such advice should ensure that all areas of advice necessary are procured and wherever possible that the sufficiency (and timeliness) of advice received is measurable against specified targets. Such a brief must also, in the case of long running projects, be revisited periodically.

3.2.2.8 Finally, in relation to the briefs, they can be seen to reveal some of the inadequacies of the externalisation model adopted in that each consultant was instructed to prepare or evaluate a business case without the benefit of a clear set of corporate service specific objectives described as a prospectus by Tony Hall in his earlier work

### **3.3 Decisions regarding Protocols and Procedures**

#### **3.3.1 Conflicts of Interest**

3.3.1.1 Leisure Partners Limited were appointed to manage the externalisation project in April 1998, and their proposal included two key points of advice to the Council:

- There should be a small Council led project team;
- The Council would need separate advice to assist with challenging and considering the business plan.

3.3.1.2 However, soon after the appointment, the project stopped whilst consideration was given to the completion of the Compulsory Competitive Tendering (CCT) process.

3.3.1.3 The CCT model and influence remained with the project thereafter, and apparently had considerable influence over future processes and protocols.

3.3.1.4 On 27<sup>th</sup> July 1998, the then Policy Committee received a report on the options for Leisure Management, and within that report received legal advice from Eversheds as follows: “any existing Wight Leisure staff involvement in the formation of the Industrial Provident Society should take cognisance of audit commission guidelines on management buyouts”.

3.3.1.5 There is no evidence of that advice being interpreted further as specific guidance for either officers or elected Members of the Council. There had been, however, a number of high profile cases prior to that time that had both resulted in financial ruin for local government officers and acute criticism of the local authorities involved.

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- 3.3.1.6 That cautionary advice was repeated by Lawrence Graham in June 2001 as follows: “The potential for conflict of interest should be minimised as far as possible and every effort should be made to ensure that the NPDO received independent legal and financial advice. This is an issue that has been picked up by the District Auditor in his letter of 8<sup>th</sup> June.”
- 3.3.1.7 Wight Leisure Limited (WLL) was incorporated on 13<sup>th</sup> June 2001, and the extent to which this was widely realised across the Council is unclear. In practice, this event has very high significance, since effectively a new legal entity had emerged, and the employees of Wight Leisure (the Council Department) could not have any direct contact with that entity in the absence of clearly articulated and widely understood safeguards in the form of a communications plan/protocol, without becoming seriously compromised. At this point the ‘contractor/client’ split designed for CCT ceased to be appropriate. The project should have become regarded as a procurement project, subject to the Council’s Contract Standing Orders, and well established protocols for managing relationships between local authorities and third bidders in procurement situations. By this means the potential for conflict would have been identified, managed and avoided.
- 3.3.1.8 This advice was conveyed to the Executive on the 21<sup>st</sup> August 2001, and the Minutes of that meeting record the following: “THAT appropriate action be taken to ensure that officers have no conflict of interest throughout any negotiations, best value review or other strategic decisions taken in relation to Wight Leisure's services.”
- 3.3.1.9 Insufficient action, at both a strategic and operational level, was taken to ensure that officers avoided conflicts of interest, although it must be noted that some steps were taken, for example, drafting and presenting reports to the Executive was from August 2001 undertaken without direct input from senior officers within Wight Leisure. There is clear evidence that individuals involved in the process applied their minds to the issue of potential conflict, but that solutions were not identified, agreed and implemented.
- 3.3.1.10 WLL was effectively the Council’s “preferred bidder” in a negotiated procurement process. The Council, apparently, gave no further guidance to its officers or elected members on the interpretation and application of the Executive minute, and the process continued as though the creation of WLL had not happened, with the result that officers of Wight Leisure effectively worked for WLL in developing the business plan for that company, and were as a result seriously compromised.
- 3.3.1.11 Directors and employees of Leisure Partners Limited had become owners and officers of WLL, and their ongoing relationships and contacts with the Council should have changed to a formal relationship consistent with that of preferred bidders for a contract.
- 3.3.1.12 On 21<sup>st</sup> May 2002, the Executive apparently purported to delegate powers to the Economic Development, Planning, Tourism and Leisure Services Select Committee to oversee negotiations in respect of all matters relating to the transfer. The resolution of the Executive was minuted as follows: “THAT the Economic Development, Planning, Tourism and Leisure Services Select Committee oversee negotiations in respect of all matters relating to the transfer and the final details of the agreements with the Not for Profit Distributing Organisation be submitted to the Executive at its meeting on 27<sup>th</sup> August 2002.” Without more specific guidance to the Committee, the potential for compromise of the Committee itself was high, bearing in mind its scrutiny role. It also had no powers to influence submissions made on behalf of WLL (the, by now, independent entity) and should have been clearly advised that this was the case.

- 3.3.1.13 The progress made by the Select Committee was in fact reported back to the Executive on 5<sup>th</sup> November 2002 and a copy of that report is attached as Appendix A to this report. The Report is reproduced in its entirety, since it illustrates the continued lack of protocol in acknowledging the “preferred bidder”, WLL. Paragraph 2.2 records that a presentation had been received from Wight Leisure (not WLL) in respect of its proposals following externalisation. Wight Leisure (the Council Department) could make no such presentation on behalf of WLL. The report continues as though negotiations with Wight Leisure had been conducted on issues such as funding, the nature and extent of the services to be transferred, and details of the premises to be transferred. The existence of WLL since June 2001 rendered such “negotiations” meaningless, and the involvement of council officers on both “sides” of these meetings, without the sort of safeguards referred to above, added to the potential for the compromise of all of those involved.
- 3.3.1.14 Further illustrations of the confused nature of the role of that committee of the Select Committee, and of officer’s roles exist. Firstly the seeking and provision of information by the then Chairman of a letter dated 19<sup>th</sup> September 2002, from an employee of the council, assuming an ability to provide information on behalf of WLL.
- 3.3.1.15 Secondly in an attempt to improve communication with Wight Leisure, the then Select Committee Chairman was asked by the Chief Executive Officer to act as a link with officers within Wight Leisure, on the understanding that this would prevent him from undertaking a scrutiny role. It was agreed that if further scrutiny was required the Vice Chairman would take the chair. This step represents an unorthodox, if well intentioned, approach to the role of, firstly officers of the Council and, secondly, of the Select Committee.
- 3.3.1.16 With the benefit of hindsight the decision of the Executive on 21<sup>st</sup> May 2002 seems, at best, to lack sufficient clarity, not least because no terms of reference were given to the select committee and there was no consideration of the statutory and constitutional framework.
- 3.3.1.17 As a matter of law, (see particularly ss13 and 21 Local Government Act 2000) the Executive cannot delegate powers to the Select Committee. This decision is thus best interpreted as a request from the Executive to, either, undertake an exercise in policy development (in terms of recommending strategic and service specific objectives for the externalised service), and/or to scrutinise the actions of officers undertaking the work on behalf of the Executive. The Head of Select Committee and Best Value Support is clear that this interpretation was the one he adopted in supporting and advising the Select Committee.
- 3.3.1.18 In the developing field of local authority strategic procurement, there are a number of roles which a select committee can be asked to take on. These include policy development to recommend strategic or operational outcomes and objectives, a gate keeping role in a wider project management approach and/or scrutiny of the endeavours of others. Assuming project management responsibilities is never likely to be a role which a select committee is able to discharge. One substantial reason for this is that the closer a select committee is associated with a decision making process, the less able it is to discharge it’s valuable scrutiny role. A further fundamental reason is that a Select Committee cannot take decisions in a procurement process. As noted above there are statutory limits to the terms of reference of select committees. The reference in the Executive report to “overseeing” negotiations created the risk that some parties would see the Select Committee as assuming a project management role.

- 3.3.1.17A The then Chairman of the Select Committee believes a lack of detailed and timely information further limited the extent to which the Select Committee was able to contribute to progress.
- 3.3.1.19 The select committee, again with the benefit of hindsight, could have resolved the weakness of its role in the process establishing clear terms of reference for itself. This would, as a practical step, have cleared the uncertainty and, had legal advice been taken about the possible roles which it could assume, any ambiguity about the statutory basis for those roles been resolved. This would also have enabled those trying to assist the Select Committee to give focussed and timely reports.
- 3.3.1.20 Furthermore, the work of the Select Committee was weakened by its failure to direct its work at all times to the development of evidenced and reasoned recommendations to the Portfolio Holder, the Executive or to officers.
- 3.3.1.21 In the event, a great amount of time and energy was spent by a number of officers and by members of the Select Committee (who without exception appear to have been motivated by a desire to make the process work in the best interests of the Council as they saw it) in an ultimately fruitless attempt to work through the externalisation process.
- 3.3.1.22 Work undertaken by Neil Newton to examine decision making in relation to the 2002 music festival has already identified weaknesses in the corporate understanding of the statutory and constitutional basis and roles of select committees during 2001 and 2002. Those weaknesses are being addressed by a programme of training for all members and a wide range of officers, in line with Neil Newton's recommendations. That training addresses the general level of knowledge required by members and officers in order to ensure that proper processors for decision making of this sort are identified and followed.
- 3.3.21A It is easy to understate the complexity of the task which adopting modernised political structures represented. The nature of that task involved applying new principles and structures of considerable technical detail. Equally significantly, a profound cultural change was required. Existing and familiar norms ceased to apply. In the context of this externalisation process, for example, the guidance from the Audit Commission became out dated in style, and to a degree, in content as concepts such as decision making service committees were abandoned.
- 3.3.1.23 Between October 2002 and February 2003 Leonie Cowen, the Council's legal advisor, was raising questions concerned with conflicts of interest, the potential breach of s 19 Local Government (Miscellaneous Provisions Act) 1976 and referring to the Local Government Act 2000, and its provisions regarding the conduct of Local Government Elected Members and employees. Several attempts were made to grapple with and resolve these concerns, including an increasing personal involvement of the Chief Executive Officer, the Director of Finance and Information and the Head of Legal and Democratic Services. The length of time taken to share and respond to that advice is symptomatic of the lack of a robust project management approach, but also, that all concerned were concerned to deliver, rather than halt, delivery of a long held corporate objective.

- 3.3.1.24 The Head of Community and Development (in consultation with other colleagues) in March 2003 therefore, commissioned the independent review of the procurement process at the recommendation of the Chief Executive Officer (on Legal and Financial advice). The commissioning of the review was a rapid change from the planned utilisation of external support simply to deliver the project. The change in plan was a result of the initial perception of the process gleaned by Tony Hall who was recruited to provide assistance.
- 3.3.1.24 Paragraph 6.3 of the Council's Financial Regulations deals with the subject of Pecuniary Interests and Conflicts of Interest. There is little doubt that the regulation was not complied with to the letter so far as registering interests or disclosing information to third parties is concerned. However, there is no evidence that either officers or elected members sought to conceal potential conflicts. The Council did become aware of the of the conflict of interest which arose, but should have been more aware of the potential for such conflicts in a project of this nature and taken more active steps to prevent them arising.
- 3.3.1.25 When it became apparent that conflicts were arising, albeit in a less than systematic manner, appropriate action was taken to review, and quickly thereafter to stop, the procurement process.
- 3.3.2 Sharing of Information and Advice
- 3.3.2.1 The previous review identified areas where either side of the "split" had either not had access to the same information, or had independently interpreted that information and advice.
- 3.3.2.2 The implications of this were particularly serious in respect of interpretation and sharing of advice from three separate external legal advisors and the District Auditor; and in the interpretation of decisions of the Executive.
- 3.3.2.3 There is a direct parallel between the failure to deal systematically with potential conflicts of interest and the manner in which information and advice was used in the conduct of the Externalisation project. This was particularly the case in interpreting the powers granted by Local Government Act 2000. Different parties to the process had a variety of levels of knowledge about, and therefore views as to the significance of, Part I Local Government Act 2000. Conflicting advice was procured as to whether the powers in Part I creates avoidable extra risk if relied upon in the externalisation approach, or cure some of the weaknesses in s19 Local Government (Miscellaneous Provisions Act) 1976. The approach to procuring and sharing such advice needs to be set out explicitly, and adhered to.
- 3.3.2.4 The Project Board should, by establishing a formal communications plan as part of the project management approach, ensure that there is not a repeat of previous failings, and guarantee a shared understanding
- 3.3.3 Recording of Decisions
- 3.3.3.1 The recording of decisions of the Executive in relation to procurement project need to be very carefully considered, since, as public records, those decisions will be interpreted not only within the Council, but also by external bodies.



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- 3.3.3.2 The report produced in May 2003 refers to some recorded decisions that were interpreted as reflecting that the Council had decided that the externalisation of Wight Leisure to firstly a management developed NPDO and secondly to WLL had been decided. Based on this representations had been made to a bank regarding funding, and the Westridge proposals developed and represented as definite proposals.
- 3.3.3.3 The duty of the Council to make a reasonable decision that discharges the fiduciary and best value duties of the Council requires that public reports and records of decisions are framed in a cautious manner until such time that a final decision can be made.
- 3.3.3.4 Throughout the process analysed in this report, there were occasions in the externalisation process when decisions were not recorded with sufficiently detailed reasons, particularly when the decision deviated from the published recommendation. Although new approaches have been adopted, guidance issued and training delivered since the decisions in question here, there is also room for further improvement in the precision of drafted recommendations and in the detail and specificity of reasons set out in reports to the Executive.
- 3.3.3.5 As the externalisation process is restarted, all concerned must be clear that no irrevocable decisions have been taken, and the judgement to externalise to WLL (or any other procurement decision) will need to be taken on sound best value grounds immediately prior to the transfer. It will also be useful to remind all interested parties that pending any transfer Wight Leisure remains a department of the council, and as such is bound by corporate rules and processes, and subject to local government legislation.
- 3.3.3.6 It is usual in such circumstances to refer only to negotiations continuing with a “preferred” bidder, who may be named, and this approach should be adopted when referring to WLL.
- 3.3.3.7 The Executive on 4<sup>th</sup> June 2003 has agreed to proceed with the project under the supervision of a Project Board. A key function of that Board will be to interpret and disseminate advice and information to those officers and elected members that need to know. It will act as the intelligent client to appointed specialist advisors working for the Council (not those working for WLL).
- 3.3.4 Restructuring.
- 3.3.4.1 The service in question has been subject to a number of changes in reporting lines at a senior level. This has, previously, been the subject of comment by Tony Hall and Neil Newton.
- 3.3.4.2 Wight Leisure became part of the Community Development Service in April 2002, formalising a reporting structure which had subsisted since the previous October.
- 3.3.4.3 Whilst a certain amount of reorganisation is inevitable over time, and there is an expectation that this should be managed to the benefit of the service, it is clearly the view of those involved in this process that the number and frequency of changes in corporate structure, in relation to both Wight Leisure and community development, has contributed to some of the weaknesses set out in this report.

## **4 SPENDING AND SPENDING COMMITMENTS BY THE COMMUNITY DEVELOPMENT DEPARTMENT**

### **4.1 Project Expenditure**

#### **4.2 Spending Prior to November 2000**

4.2.1.1 The project was live from 1998, and there was undoubtedly expenditure being incurred with consultants and advisors over that timescale. Leisure Partners, Leisure Futures and Eversheds, solicitors were engaged during that period.

4.2.1.2 The amount of that spending has not been analysed for the purpose of this review due to the intervention of the best value review (which had its own associated costs which are entirely legitimate and are not further analysed in this report) and the fact that the spending in question predated the decisions of the Executive in November 2000 and August 2001. Any spending prior to those decisions is best regarded as a discrete project abandoned in favour of the best value review.

#### **4.3 Allocation of Budget for the Project 2001 to date**

4.3.1 The Executive was informed, at the meeting of 30<sup>th</sup> November 2000, that the costs of setting-up the Trust Option were estimated as £25,000 for each party.

4.3.2 At the meeting of 21<sup>st</sup> August 2001, Executive was informed that PMP, an independent leisure consultancy had been appointed to review the externalisation process and business plan. At two meetings in May 2002 the Executive was informed that “a sum of approximately £20,000 had been set aside in the budget to meet the Council’s costs in the process”. The latter sum represented the balance of the approved costs of £25,000 for client side preparatory work (£5,000 having been paid in fees to Lawrence Graham Solicitors).

4.3.3 On the contractor side, Leisure Partners Limited was appointed to this phase of the project, in April 2001, for a fee of £20,000 exclusive of VAT.

4.3.4 On the client side PMP Consultancy were appointed in July 2001 for an estimated fee of £19,850 plus expenses including specialist advice from Leonie Cowen Associates (in relation to the Funding Agreement), solicitors, and KPMG, employed to advise on VAT issues. Other legal work (preparation of leases, transfer agreements etc) was to be undertaken in house.

4.3.5 The quotations, at this point, were within the estimate reported to Executive in November 2000, although the delay pending completion of the best value review might reasonably have been expected to increase costs.

4.3.6 A further proposal was received from PMP Consultancy dated 1<sup>st</sup> August 2002 stating that their fees would be between £35,000 and £51,000, excluding VAT and to include the fees of Leonie Cowen Associates (solicitors) and KPMG (accountants). A principal cause of this increased estimate was the decision to outsource more of the required legal work.

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### **4.4 Actual Expenditure and Commitments 2001 to date.**

4.4.1 The following is based on an extraction from the Council's Creditors System:

<b>Name of Creditor</b>	<b>Services</b>	<b>Amount £</b>
Leisure Partners Limited	Supporting process of creation of Wight Leisure Limited	20,833
McCabe Ford Williams	Charitable status and taxation implications for Wight Leisure Limited	2,100
Marsh	Insurance Advice for Wight Leisure Limited	7,500
Co-operative UK	Subscription	47
Lorraine Bevan Associates	HR Consultancy for Wight Leisure Limited	1,500
Roach Pittis	Legal services for Wight Leisure Limited	Invoice to come
	<b>Total Wight Leisure Limited</b>	<b>31,980</b>
PMP Consultants	Support to client-side, including legal advice and assistance from KPMG	37,214
Lawrence Graham	Legal advice during 2001	4,054
Institute of Public Finance Limited	Independent review April/May 2003	8,400
	<b>Total IOW Council</b>	<b>49,668</b>
	<b>GRAND TOTAL</b>	<b>£81,648</b>

4.4.1.1 It is understood that only the £20,833 paid to Leisure Partners Limited has been charged to the Council's Revenue Account, the remainder having been deferred as debtors in the expectation that they would be recharged to WLL

4.4.2 The lawfulness of this expenditure needs to be questioned on three grounds.

4.4.3 Authorisation

4.4.3.1 The practice in the Council was that member authorisation is required for overall expenditure whereas detailed decisions were taken by officers. The scheme of delegation and financial standing orders provided for this. The advent of executive governance (as a

pilot initially, and under legislative change from June 2001) saw an intention to concentrate member decision making on issues of corporate or strategic significance.

- 4.4.3.2 Perhaps because of these changes in decision making practise, and no doubt also due to the changing nature of the externalisation process after the best value review, reports to elected members lack a consistent approach. Initially, in November 2000, a business case, including an estimate of process costs was presented to members for approval.
- 4.4.3.3 The council accepted the concerns of the District Auditor that this approach lacked the robust assessment of the procurement options required by the 1999 Local Government Act and the best value regime.
- 4.4.3.4 The best value/procurement approach was undoubtedly the correct one. It's advent did, however, mean that the earlier focus on the process costs was lost.
- 4.4.3.5 The November 2000 Executive decision approved the business case and the estimated costs but did not, in the resolution, specifically address the authorisation of costs, nor identify where they were to be met from.
- 4.4.3.6 That decision is therefore best read as acknowledging, implicitly, that expenditure on the process would be met from existing Wight Leisure budgets, using officer delegations to determine spending priorities, if the estimate proves to be insufficient
- 4.4.3.7 It is unnecessarily restrictive to interpret the November 2000 decision as imposing a specified maximum amount of expenditure on the externalisation project. The most natural reading of the report and the record of the decision is that either
- that the objective of externalisation was authorised and, with only the caveat that spending must be from existing budgets (and presumably not to the strategically significant detriment of other service provision), any reasonable expenditure was within officers powers under the scheme of delegation.
  - that it authorises spending in the general magnitude of the estimate and that a degree of tolerance at officers discretion can be read into the resolution
- 4.4.3.8 This report accepts the latter interpretation as the natural reading of the report, the decision record and the 2001-2002 budget allocation.
- 4.4.3.9 Other decisions do need to be considered. In the light of the analysis in this section, the involvement of the then Strategic Director of Finance and Information in August 2002 in authorising a further £25,000 expenditure can be seen as enabling a legitimate and auditable use of earmarked reserves. The expenditure on "client side" activity appears to have been properly authorised.
- 4.4.3.10 More concerning is the pattern of spending on "contractor" costs. By contrast to spending on the "client" side of the equation, there is no evidence of advice being sought by those responsible for taking delegated decisions, nor that those individuals applied their minds to the issue of whether sufficient authorisation existed. Such inattention has the potential to lead to illegality if the resulting decision fails to take into account relevant factors and is therefore unreasonable in law

4.4.3.11 Fortunately, unreasonableness has a high threshold and, by accident or design, the permissive/enabling nature of the Executive decisions reduces the significance of an explicit consideration of authorisation. Whilst it is never wise, nor good practice, to fail to consider the extent of member authorisation and/or officer delegation, the failing in this instance does not appear to have led to illegality.

4.4.3.12 The interpretation of decisions preferred in this report sees officers using their delegated powers. The exercise of such delegated power must be reasonable in all the circumstances. Expenditure on the externalisation project has totalled more than the estimate reported to the Executive in November 2000. In many situations it would be difficult to conclude that a spending in excess of an estimate reported to members was a reasonable exercise of officer delegations.

However, in this case a considerable amount of time had elapsed since the original decision, time which was used to complete a best value review. Further, the Executive considered the issue on three occasions in 2001 and 2002, endorsing the original externalisation proposal each time, resolutions which are silent on the costs of the process. This approach is best seen as a continued commitment to achieving the objective within existing budgets at the discretion of officers under delegated powers, the estimated costs set out in November 2000 having ceased to have any significant currency.

4.4.3.13 Only if the analysis set out above is proved to be wrong does the reference to £20,000 in the 2002-03 budget become significant. That budget was approved by Full Council, albeit on the basis of a presentation of options that would not have made that level of information explicit. If the interpretation of the November 2000 decision is seen (contrary to the interpretation adopted here) as imposing a rigid ceiling on expenditure, it is possible, and reasonable to interpret that budget as a further approval of the additional funds in addition to those approved in November 2000. This would, at the least, render a total of c£70,000 as specifically approved. For reasons set out above there should be no need to rely on this analysis.

4.4.3.14 This report concludes, therefore, that the expenditure was not unlawful for want of proper authorisation.

4.4.3.15 Nevertheless, significant criticisms must be made of the authorisation process:

- The externalisation issue is a significant strategic procurement exercise, which appears to have suffered from the lack of corporate guidance, rules or protocols governing such processes (this council was not, at the time in question by any means unusual in this regard)
- Inconsistent reporting methods meant patchy and sometimes inadequate information was given to members
- There was a regrettable lack of clarity in the financial information set out in reports to members, which did not identify where funding was coming from
- There was insufficient information in reports to members to clearly set out the powers which were being relied upon to effect the externalisation and to advise members that those powers are sufficient.

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- There was a regrettable lack of clarity as to what decisions members were being asked to take, and which decisions officers were required to take, and in reliance on which powers
- Previous corporate guidance to keep reports to members short is understandable and, in aiming to make the reports accessible and digestible is laudable. However, as corporate guidance it appears to have led to an emphasis on brevity at the expense of clarity and sufficiency of detail.

4.4.4 S19 Local Government (Miscellaneous Provisions) Act 1976/Pt 1 Local Government Act 2000.

4.4.4.1 Provision of leisure services has traditionally been in reliance on s19 Local Government (Miscellaneous Provisions) Act 1976. This statutory provision has limitations which have been well defined in a number of reported cases. The enactment of Part 1 Local Government Act 2000 changed the relevant statutory context. The extent of this change has yet to be tested in the Courts. The council took general advice about the issue of powers from Lawrence Graham Solicitors. This advice identified the available powers and the limitations they created. However, the Council did not sufficiently consider the detailed application of the law as expenditure was planned and incurred on behalf on Wight Leisure Limited. Decisions, as they were taken, should have been on the basis of specific advice about the availability and limits on the statutory powers.

4.4.4.2 Counsel has subsequently been instructed to advise whether or not all of the expenditure incurred on behalf of Wight Leisure Limited was lawful under s19 (latterly with the addition of the Part 1 well-being powers. That advice is clear that there was insufficient consideration of the powers available, but that the inadequacies are curable and do not amount to unlawful expenditure

4.4.5 Grant Aid/Assistance in Kind

4.4.5.1 Assistance to start up companies under s19 is usually by grant, (or loan) rather than in kind, in order to avoid the limitations of that provision. As the majority of the expenditure incurred on behalf of Wight Leisure Limited is shown in the council's accounts as an outstanding debt, the council will wish to reach agreement with WLL as to how the debt is to be discharged.

4.4.5.2 Counsel has advised that, as it is difficult to point to a valid decision to exercise Local Government Act 2000 powers, and that (although this is borderline) reliance, for all expenditure incurred, should not be placed on s19 Local Government (Miscellaneous Powers) Act 1976, for the avoidance of doubt the Executive should consider a recommendation to regularise the expenditure to date in reliance on the 2000 Act powers. Counsel's advice is set out in full at Appendix F.

4.4.6 Overview

4.4.6.1 There will be those who consider the expenditure of over £80,000 on a (thus far) unsuccessful externalisation process represents wasted money. This is not necessarily the case. The challenge for the council now is to ensure that, whatever future procurement model is settled upon, the activity undertaken to date (and the associated cost) is utilised to ensure the conclusion of a robust process which results in a procurement of a service delivery mechanism which is likely to deliver clearly specified, best value, service

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objectives. In those circumstances the expenditure can be seen as an investment in the future improvement of the service, rather than the cost of an abortive attempt to adhere a particular delivery mechanism.

## **5 RELATIONSHIPS WITH THIRD PARTIES**

### **5.4 Procurement and Use of External Advisors in the Restarted Project**

#### **5.4.1 The Council's Advisors**

5.4.1.1 The Contract Standing Orders determine the process that the Council will follow in the procurement of External Advisors/Consultants. For transactions of £50,000 or less, three written quotations must be invited.

5.4.1.2 Criticism of the approach to the briefing of external consultants is set out above as is a recommendation that such briefs need to be more extensive, contain measurable targets where possible and be reviewed during the lifetime of the project flow from that criticism.

5.4.1.3 PMP Consultants were appointed by following this process, and it is for the project board to decide whether or not it wishes to continue with their services.

5.4.1.4 That decision will ultimately be based on the level of satisfaction with the services received so far, and the likely cost to the Council of retaining different advisors at this stage of the project. The appointment of alternative advisors would, undoubtedly, create further delays in the project. PMP are not tainted by any conflict of interest.

5.4.1.5 The Project Board must, at an early stage develop its project plan, with key milestones programmed into the plan. It must also determine whether or not it requires external help with the development of the Prospectus and Outline Business Case.

5.4.1.6 Once the above actions/decisions are agreed, a specification of the requirements of the advisors can be developed. It is crucial that key dates are specified so that external advisors do not delay progress. That specification should also clearly define reporting lines, either to the Project Board or Project Manager.

5.4.1.7 Based on the specification the advisor should be in a position to quote for the likely cost of completing the project.

#### **5.4.2 WLL's Advisors**

5.4.2.1 It is assumed throughout this report that the Council intends to continue with exploring the prospects of externalisation to WLL, and not with any other entity.

5.4.2.2 In normal circumstances the appointment of advisors by WLL would not be of direct concern to the Council. The Council would, however, indicate the protocol for contacts between the two parties, and how WLL represents itself as the "preferred bidder" to provide leisure services.

5.4.2.3 However, the unusual situation in which the externalisation project is now at suggests that a more pragmatic approach is required.

5.4.2.4 Directors and employees of Leisure Partners Limited are the founder directors of WLL, and Leisure Partners Limited have hitherto been the lead advisors, previously to the



Council and since June 2001 to WLL. They are therefore in a position of unique understanding of the project, and probably most likely to be able to meet the Council's timescales for responding to the Prospectus.

- 5.4.2.5 The original intention to move from founder directors to the proposed Board structure was delayed and deferred due to the "stop-start" progress of the project, and the appointment of an ongoing Board of Directors has not happened.
- 5.4.2.6 If the existing Directors of WLL are not in a position to identify suitable persons from within the Isle of Wight to fulfil the role of independent directors of WLL, and the Council may well have to provide assistance with this aspect.
- 5.4.2.7 The Council's influence with this aspect is potentially delicate, and any assistance needs to be approached with caution.
- 5.4.2.8 For the project to proceed, WLL needs to move from being a dormant company to being an active company that can apply for grants from the Council to enable it to meet the costs already incurred (see paragraph 4.1.4.2), and the future costs of the procurement process. It must be determined by WLL, whether that company's rules will enable this to happen.
- 5.4.2.9 The Council's intention to progress the project quickly means that the independent directors of WLL will immediately need guidance and advice from other than Leisure Partners, and it is known, for example, that PriceWaterhouseCoopers have previously supplied financial and commercial advice to the embryo NPDO. It may be that that firm could assist the independent directors in analysing submissions made on their behalf by Leisure Partners.

### **5.5 Other Relationships**

#### 5.5.1 Commercial and Public Sector Partners

- 5.5.1.1 During the project, so far, representations have been made to potential bankers for WLL and Isle of Wight Economic Partnerships with indications that WLL had been selected by the Council to operate leisure services on the Isle of Wight.
- 5.5.1.2 Such representations are not unusual in procurement and externalisation projects, but there are a number of recognised practices for doing this. The need to carefully record decisions of the Council in strict context as referred to in Section 3 is vital to avoid both misunderstanding and also the danger of misrepresentation.
- 5.5.1.3 It would not normally be expected that approaches would be made on Council notepaper, which occurred in this case.
- 5.5.1.4 In the case of more conventional procurements under the negotiated route, it is normal for a council to provide a "preferred bidder" with a letter confirming that status, but containing the rider that such a letter is not a statement of intent by the council to enter into a contract. Such letters would not normally be issued to bidders who had not satisfied the pre-qualification criteria.

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- 5.5.1.5 On the strength of such letters “preferred bidders” will seek to discuss funding and commercial propositions with third parties. This usually takes the form of a “soft market” test to enable the bidder to provide greater substance to proposals made to the council.
- 5.5.1.6 Representations made in respect of Wight Leisure Externalisation have not followed this convention, but in view of the proposed procurement not being a competitive process, any lasting damage in relationships is unlikely to be significant.
- 5.5.1.7 In any instructions issued by the Council to WLL in the restarted project the Council should prescribe the conventions it would wish WLL to follow prior to the finalisation of contracts.

### **6 GENERAL**

#### **6.1.1 Wight Leisure Externalisation**

6.1.1.1 The externalisation of Wight Leisure has been an expressed intention of the Council since, at least, 1998.

6.1.1.2 The nature and timing of the project has been deflected by three key events:

- The discontinuance of the CCT regime, and the advent of the Best Value Regime
- The intervention of the then District Auditor and the conduct of the best value review
- Emergence of flaws in the process from June 2002 onwards

6.1.1.3 Each of the above has deflected the Council from its intent to externalise its provision of leisure services to a management led “not for profit distributing organisation” (NPDO).

6.1.1.4 The independent review undertaken in April and May 2003 sought to identify how the Council’s intent, expressed since 1998, had not been delivered by early 2003 had failed to deliver an NPDO solution.

6.1.1.5 As the initial review identified serious defects in corporate engagement with the Wight Leisure externalisation project, this report needs to identify the mechanisms by which the Council is likely to avoid such failings in the future.

#### **6.1.2 Ongoing Approach to Wight Leisure Externalisation**

6.1.2.1 The Executive has accepted the recommendations arising from the previous review, and gone further by nominating members of the Executive as members of the Project Board.

6.1.2.2 Such action is welcomed and consistent with the role of Executive Members in the modernised decision making structures and in emerging local and national approaches to strategic procurement.

6.1.2.3 The role of the Project Board is to ensure that the Executive is provided with sufficient information to make a reasonable and prudent decision with regard to the externalisation of Wight Leisure to a NPDO, and to formulate and deliver a project plan to deliver that procurement decision.

6.1.2.4 In that role, the Project Board will need to consider whether or not decisions made by the Council as long ago as 1998 are still relevant in 2003, bearing in mind the Best Value Review, Council’s Medium Term Financial Plan, changes in legislation and the advent of the Prudential Code.

### **6.1.3 Developments within the Council since 1998**

- 6.1.3.1 In the five years since the commencement of the Wight Leisure Externalisation Project, the Council has moved forward to adopt best practices in a number of related areas:
- 6.1.3.2 It has adopted the principles of medium term financial planning. In the context of the Wight Leisure Externalisation Project, this should enable it to more precisely define what it means by “no extra cost to the Council”, one of the express principles of the externalisation process.
- 6.1.3.3 It has in conjunction with the above developed a risk management strategy, which should enable it to be more aware of the risks involved in both the procurement process of externalisation processes and the ongoing contract risks.
- 6.1.3.4 It has developed expertise in formal project management and is adopting corporate standards based on “PRINCE 2”, i.e., Project Management in Controlled Environments, standards which are consistent with currently recognised best practices both within the public and private sectors.
- 6.1.3.5 Finally, it has developed a Procurement Strategy (adopted in November 2002) which is currently being revisited in order to reflect emerging local and national best practice, including a corporate approach to strategic procurement.

### **6.1.4 Directorate of Education and Community Development**

- 6.1.4.1 The Directorate is large and diverse, combining a number of high profile discretionary services with various (principally education) non discretionary services.
- 6.1.4.2 Wight Leisure has a combined net expenditure of £1,854,000 (expenditure £4,393,000, net income £2,539,000). Other elements of the Directorate control new expenditure of £70,000,000.
- 6.1.4.3 The senior management team is very small, comprising the Strategic Director and two heads of service.
- 6.1.4.4 The Head of Community Development has 14 direct reports.
- 6.1.4.5 The Community Development Department includes Tourism and Leisure, both services currently undergoing comprehensive procurement exercise. No assessment of the amount of human (and other) resources necessary to deliver these two projects appears to have been undertaken.
- 6.1.4.6 Neil Newton, in his report on the 2002 Festival, has already identified the danger of a “them and us” situation developing in relation to Wight Leisure. Partly as a result of the old CCT regime, and partly as a result of all parties anticipating the outcome of the externalisation process, a widespread perception that Wight Leisure has a devolved status seems to have been generated. For so long as Wight Leisure remains a mainstream department of the Council, this inaccurate perception is unsustainable and will tend to inhibit the delivery of service improvements.

### **6.1.5 Challenges for the Council**

- 6.1.6 Having adopted all of the above, the Council must ensure that each are embedded within the Council's approach to its dealings with external organisations, and they result in consistent and "joined-up" thinking in relation to its dealings with potential partners.
- 6.1.7 In that context, the ongoing progression of the Wight Leisure externalisation must be continually reviewed taking into account its medium term financial plan, its risk management strategy, its ability to comply with a project plan based on the PRINCE 2 methodology, and its Procurement Strategy.

### **7 CONCLUSIONS**

#### **7.1 Wight Leisure Externalisation Project**

- 7.1.1 In its consideration of the review of processes related to the Project, the Executive has acknowledged weaknesses in the processes and protocols surrounding the Externalisation Project.
- 7.1.2 Those protocols and processes had evolved with the prolonged externalisation project that had commenced in 1998, had been interrupted by the CCT process and Best Value Review, and had failed to reach a satisfactory conclusion by 2003.
- 7.1.3 Not only was the project dogged with uncertainty as described above, but it was also hampered by lack of clarity of advice and misunderstanding of respective roles. The effect of preparation for, and adoption of, modernised structures in June 2001 should not be underestimated. That productive and proper roles for Portfolio Holders and Select Committees were not easily and quickly identified, particularly in relation to high profile projects (such as the externalisation process and the 2002 Festival), is illustrated both in this report and in the earlier work by Neil Newton.
- 7.1.4 Conflicts of interest arose at various stages of the project. Such conflicts were not recorded as required by financial regulations, and the Council should have taken formal steps to identify, record and deal with potential and actual conflicts.
- 7.1.5 No provision was made for proper sharing of information and advice, but the introduction of the Project Board should rectify this deficiency.
- 7.1.6 Authorisation of expenditure lacked the clarity and precision of good practice, but stopped short of being unlawful.
- 7.1.7 The appointment of advisors was consistent with the Council's Contract Standing Orders, and quotations were within the allocated budgets, although further approval for additional costs being incurred by the "client" was required, and obtained in August 2002.
- 7.1.8 Total expenditure from 2001 to date has amounted to in excess of £82,000. Of this amount more than £32,000 had greater potential to be, but because insufficient attention was given to the statutory basis for this expenditure unlawful or by virtue of being beyond statutory powers.
- 7.1.9 Nevertheless, Counsel has advised that there is no irredeemably unlawful expenditure

#### **7.2 The Project Board**

- 7.2.1 In response to the independent review of the Project undertaken in April/May 2003, the Executive, on 4<sup>th</sup> June 2003, agreed that there should be a Project Board that included members of the Executive. This represented a positive step towards ensuring both the proper dissemination of information, and corporate ownership of the Externalisation Project.

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- 7.2.2 That action potentially identified that there had previously been confusion of roles, and that the project must lead to a position whereby the Executive could arrive at a reasonable and prudent decision with regard to the externalisation of Wight Leisure.
- 7.2.3 The Project Board will identify potential conflicts of interest and act accordingly.
- 7.2.4 The Project Board will oversee the project to ensure that an ultimate recommendation could be made to the Council, which would enable it to ultimately reach a final decision that was consistent with its duty to ensure affordability, and best value.
- 7.2.5 Such a structure should enable a prudent and final decision to be made.

### **7.3 The Project Manager**

- 7.3.1 The Executive has also acknowledged the pivotal role of the Project Manager in the successful delivery of the project.
- 7.3.2 It, nevertheless, has determined that there should be a challenging timescale set to deliver a final conclusion of the Project.
- 7.3.3 Any determined timescale must acknowledge the resource commitment required from the Project Manager, particularly since the Council has adopted “Prince 2” as its project management standard.
- 7.3.4 Delivery of a successful outcome will require a dedicated resource, and it is essential that this is acknowledged in any planning process.

### **7.4 General Conclusions**

- 7.4.1 The review has been confined to events surrounding the Wight Leisure Externalisation project, and arises from the previous review that sought to establish a context in which the Council could make a decision regarding Wight Leisure Externalisation.
- 7.4.2 The apparent failings raised by that review necessitate consideration of the Council’s ability to prudently embark on other externalisation or procurement of partnership arrangements.
- 7.4.3 Paragraph 6 of this report considers whether or not the Council has moved on from the Wight Leisure Externalisation experience.
- 7.4.4 There are clear and positive indications that it has, to the extent that it has committed to best practice for project management, risk management, procurement strategies and medium term service and financial planning.
- 7.4.5 The challenge remains to ensure that best practices are sufficiently embedded into the culture of the Council to ensure that the shortcomings in the Wight Leisure Externalisation project are not repeated in the future.

## **8 RECOMMENDATIONS**

To assist in implementation the recommendations made by Tony Hall in his report received by the Executive on 4 June 2003 are set out below :

### Externalisation Project

- The project should cease with immediate effect for the following reasons:
- The process has become flawed and a number of irregularities seriously impair its successful conclusion.
- An evaluation of the WLL initial proposal would in normal prudent procurement conventions disqualify WLL on two key financial criteria:
- No satisfactory evidence of fund raising capacity and funding;
- Financial robustness and financial management capacity as a new undertaking without apparent access to reserves in the short-term;
- If the Council is minded to re-start the project it must establish a prudent project plan and related protocols. An outline model is given under Section 3 of the report. It is the view of the author that the project should not re-start before the corporate issues recommendations that follow have been implemented.

### Corporate Issues

- The Council should initiate an enquiry into the irregularities that have arisen during the course of the Externalisation Project;
- A further review is essential to establish exactly why and how the organisational deficiencies that have come to light during this review happened and to determine how to prevent them in the future.

8.1 The recommendations which follow are grouped together and for ease of reference and response. Whilst they may be received and implemented individually, they are best seen as an interlinked and interdependent series of recommendations to which the council will wish to make a corporate response.

### **8.2 The Externalisation Project**

8.2.1 The Executive, at its meeting of 4th June 2003, has resolved that a Project Board will assume responsibility for the ongoing Externalisation Project, the following recommendations are on the basis that the project will continue in accordance with that decision.

8.2.2 The Project Board must determine a project plan that will deliver the Project in accordance with the expressed ambitions of the Executive but which also challenges whether the assumptions which underpin that ambition are still valid.



## **WIGHT LEISURE EXTERNALISATION**

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- 8.2.3 The Project Board will need to determine, at an early stage, the extent to which it wishes to adhere to the procurement approach set out in the draft national procurement strategy for local government recently published by the ODPM, and will, in any event, need to adhere to emerging corporate standards in relation to strategic procurement. It will also wish to set out the project management approach to be adopted and the extent to, and manner in, which it wishes to invite the relevant select committees to be involved.
- 8.2.4 The Project Board will need to take the lead in determining the Project Plan, and determining the timescales for delivery of the project, identifying and allocating the resources required for delivery of the project.
- 8.2.5 As an initial step, the Project Board should hold a facilitated workshop to identify both the risks to the procurement project itself, and the anticipated externalisation solution.
- 8.2.6 The Project Board will determine the respective roles of all parties to the project, including the management of conflicts of interest that are bound to arise, through the production of formal protocols where necessary. A formal communications plan should be adopted in order as part of the procurement approach adopted.
- 8.2.7 It will also need to play a leading role in the development of the Council's prospectus and outline business case for the externalisation project. The project template set out in the earlier report by Tony Hall provides a good starting point for these recommendations.
- 8.2.8 Throughout the rest of the project it will be desirable to refer to negotiations with WLL as preferred bidder rather than in any other terms.
- 8.2.9 Council employees who are not discharging a "client" negotiating role should have no direct contact with Wight Leisure Limited, its officers, employees or advisors on externalisation issues which is not within the context of a formal, agreed and recorded communications plan/protocol within the context of a formal project plan.
- 8.2.10 Wight Leisure Limited should take (and share with the council) independent advice as to whether (i) the existing directors of WLL can continue in that role, (ii) it can begin to trade and apply for grants and in the light of that advice submit proposals as to how it will address probity issues in the future.
- 8.2.11 The council should identify two of its elected members who are willing and available to be appointed to the board of the NPDO and those members should take no further part in the externalisation process, in either an Executive or scrutiny role.

### **8.3 Directorate of Education and Community Development**

- 8.3.1 Steps should be taken to ensure that the advantages of a large and diverse directorate are maximised, and that the risks inherent in such a grouping of services are well managed. In particular:
- 8.3.1.1 The Managing Director of Wight Leisure resume a more integrated involvement in the management of the Community Development Service, for example attendance at 6 weekly management team meetings.

## **WIGHT LEISURE EXTERNALISATION**

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- 8.3.1.2 Use the advent of a corporate team briefing system to review and formalise methods of communication within the Directorate and the Community Development Department, roll out of electronic communications systems pioneered elsewhere in the services.
- 8.3.1.3 Review Directorate and Departmental development activity to ensure that staff from all service areas, and particularly Wight Leisure, participate fully
- 8.3.1.4 That there be a planned reduction in the number of direct reports to the Head of Community Development.
- 8.3.2 For so long as Wight Leisure remains a part of the council, and particularly during any transitional phase:
  - 8.3.2.1 That the Head of Community Development and the Managing Director of Wight Leisure take specific and recorded steps to inform and remind staff within Wight Leisure, managers and staff throughout the council, elected members and interested third parties of the continued status of Wight Leisure as a mainstream department of the council, and the consequences of this status for service planning and delivery. Re-titling the senior posts within the service, in order to ensure consistency with other areas of the council should be considered in the event that rapid externalisation is not achieved.
  - 8.3.2.2 That steps are taken to ensure that (i) no contracts are entered in to in the name of the council when the contractual obligations and/or benefits accrue to WLL (or any other prospective contractor), and (ii) all contractual arrangements entered into for the benefit of Wight Leisure service delivery are in the name of the Isle of Wight Council.

### **8.4 Corporate Governance**

#### **8.4.1 In relation to future major procurement exercises:**

As the Council has determined to develop its corporate procurement approach in line with the national strategy currently being consulted upon, it should amend its current procurement procedures to include:

- 8.4.1.1 A corporate register of procurement decisions/contracts.
- 8.4.1.2 Mandatory evaluation of risk of procurement exercises.
- 8.4.1.3 Protocols for high, medium and low risk procurements which set out clearly the roles of the Executive collectively, portfolio holders, select committees, project management approaches and external challenge.
- 8.4.1.4 Specific steps should be taken to identify, extend and share expertise in project management within the council, as an integral part of developing the approach the procurement.
- 8.4.1.5 It is essential that the procurement processes and protocols are informed by a thorough understanding of the constitution of the Council, and in particular the separation of powers between the Full Council, the Executive and the select committees.

### **8.4.2 In relation to Executive decision making:**

- 8.4.2.1 Recently adopted arrangements to ensure that the Directors Group has the opportunity to consider the recommendations of every report from Portfolio Holders to the Executive should be rigorously followed.
- 8.4.2.2 In order to ensure Executive decision making is seen as a process, rather than an event, responsibility for the Executive Forward Plan, Directors Group agendas and Executive agendas should be brought together under the Head of Legal and Democratic Services.
- 8.4.2.3 That, at least for a trial period of 3 months, as an addition to existing briefings for members of the Executive, an officer agenda setting and briefing meeting be held in the week preceding the dispatch of Executive agendas. Attendance by report authors and those with responsibility for financial/ legal advice and administration to be required.
- 8.4.2.4 Recommendations to the Executive require more careful drafting and where decisions are proposed should be prepared with the benefit of legal advice. Any proposal to incur significant expenditure should identify the statutory power or duty being exercised.
- 8.4.2.5 Reports to the Executive from Portfolio Holders should always include explicit and sufficient reasons for recommendations.
- 8.4.2.6 Reports from Portfolio Holders to the Executive should, wherever relevant, identify links to formal corporate, strategic and/or departmental, operational risk management.
- 8.4.2.7 Reports from Portfolio Holders to the Executive which propose the incurring of expenditure must identify where the necessary finance is to be provided from.
- 8.4.2.8 A review of the Executive Forward Plan should be undertaken, taking into account the views of the select committees, in order to improve it's utility as a planning and tracking device, as well as a vehicle for publicising decisions
- 8.4.2.9 A review of the current approach to the minuting of Executive decision making be undertaken, in order to ensure that guidance from the Secretary of State is complied with and that the reasons for decisions, *particularly when there is a departure from a published recommendation*, are more explicitly stated.
- 8.4.2.10 Existing guidance to report authors should be re-written to reflect changes in practice.

### **8.4.3 In relation to the work of select committees:**

- 8.4.3.1 The Chairmen of Select Committees, Head of Legal and Democratic Services and the Head of Select Committee and Best Value Support should consider the extent to which there is still a need among select committee chairs, report authors, lawyers and administrators for specialist training in the statutory and constitutional bases of the select committees and their developing role in procurement and corporate governance.
- 8.4.3.2 In order to ensure clarity in their work all (or at least all strategically significant) exercises in overview/policy development and scrutiny by select committees should be in the context of specific, time bound, terms of reference detailing the nature and purpose of the enquiry, from whom information will be sought, to whom recommendations will be directed and on what issues. Wherever possible the terms of reference should contain an express link to corporate objectives and other related corporate activity.

- 8.4.3.3 Requests from Executive to select committees for policy development activity should include draft terms of reference.
- 8.4.3.4 Recommendations by Select Committees should be directed to named individuals or decision making bodies and be supported by reasons, cross referenced to evidence, where that would add weight and/or clarity to the recommendation(s).
- 8.4.3.5 Recommendations by select committees should be consolidated into a single record to also record their disposal and the terms of reference of the Co-ordinating Committee to be extended to include ownership and periodic monitoring of this record.
- 8.4.3.6 All reports to select committees, and preparation of select committee agendas, should have the benefit of input of legal and financial advice. Current practice of Chair's briefings should be developed to enable attendance by Chairs, report authors, committee administrators and those responsible for legal and financial advice. Briefings to be held at least two days in advance of agenda dispatch.
- 8.4.3.7 The Chairmen of the Select Committees, Head of Select Committee and Best Value support should ensure that, where widely attended Chair's briefings are not practicable or would be disproportionate to the business under consideration, all select committee reports are drafted in consultation with and signed off by financial and legal advisors.
- 8.4.3.8 The constitution of the Council, and guidance to those participating in select committee work to be revised accordingly.

### **8.5 Expenditure to Date**

- 8.5.1 Although there is no prima facie illegality in any of the expenditure, the Executive should, for the avoidance of doubt, confirm the power under which that expenditure was incurred and ensure that the mechanism by which expenditure was incurred on behalf of WLL was legitimate.
- 8.5.2 Wight Leisure Limited should be asked to confirm that it is able to commence trading and apply for grant funding.
- 8.5.3 The Westridge development is, at least partly, outside the scope of this report. However, it appears that a decision was taken to forgo income, and write off rent arrears, on the basis that £650,000 of funding for a proposed development had been secured when in fact that funding was not so secured. The Head of Community Development and Head of Property Services should re-examine the decision taken on 8 October 2002, in the light of current understanding about development proposal, and the availability of funding, and advise the Portfolio Holders for Resources and Tourism & Leisure whether any action needs to be taken.

### **8.6 Individual Conduct and Capability**

- 8.6.1 Preparation of this report inevitably raised questions about the capability and conduct of individuals. The terms of reference clearly set out that such issues will not be dealt with by means of inclusion in this public report. It is anticipated that this approach will be unpalatable to some observers and it must be stated that, in the experience of the report authors, such an approach is necessary in order to ensure that any subsequent procedures relating to individual employees can be undertaken fairly and in accordance with the law.

- 8.6.2 Legal advice in relation to this report has confirmed that any issues which arise in relation to individual employees should be dealt with confidentially and in accordance with procedures adopted for those purposes.
- 8.6.3 It follows that this report should not be read as implying the culpability, or exoneration, of any individual. If necessary these issues will be determined by the appropriate, confidential, procedures.

## **A Terms of Reference**

### **WIGHT LEISURE EXTERNALISATION**

#### **TERMS OF REFERENCE TO TONY HALL**

You are asked to assist the Chief Financial Officer and the Monitoring Officer in undertaking, as endorsed by the executive on 4 June 2003, a short investigation designed to establish:-

- The amount and legitimacy of spending on this project to date.
- Whether any recommendations can be made to the Council in relation to either the corporate or service specific management of the externalisation process.

This work should not duplicate that undertaken in preparing your report of May 2003 and should be completed by 22 August 2003.

The outcome of this investigation will be published, except in so far as to do so would breach any duty of confidentiality owed by the Council or would otherwise risk prejudicing proceedings of any kind.

In particular you are asked to:-

1. Produce a chronology of key decisions by officers and by members to include:-
  - 1.1 Decisions to commit funds.
  - 1.2 Significant procurement decisions (including appointment of consultants and/or advisers).
  - 1.3 Decisions to follow a particular structure or approach to the externalisation process.
  - 1.4 The treatment of the following issues (including decisions on the adoption of protocols or less formal ground rules); conflicts of interest; sharing of information; sharing of advice.
2. Produce an account of spending and spending commitments by the Community Development department, both as putative client and, through Wight Leisure, in developing the externalisation model.
3. Make recommendations about the future procurement and use of external advisers, in the restarted externalisation process.
4. Make recommendations about future of relationships with other Commercial and public partners, in the restarted externalisation Process.
5. Make any further recommendations about the future corporate management of the externalisation project in the light of the way the matter has been dealt with to date.
6. To make move general recommendations to the Council about its practice in procuring external advisors and managing its relationships with commercial and public partners.

These terms of reference are entirely distinct from Council conduct and capability procedures and you are not instructed to investigate the conduct and capability of individuals. If, in following these terms of reference, you conclude that a decision needs to be taken as to whether capability

## **WIGHT LEISURE EXTERNALISATION**

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and/or conduct procedures need to be invoked, please bring this to the attention of the Chief Executive Officer and Head of Paid Service.

The first priority is to enable lessons to be applied to the restarted externalisation project. To this end please consider whether any additional work necessary to identify general lessons should be treated as a discrete exercise and undertaken after the completion of terms of reference 1-4.

Finally, and by way of emphasis, these terms of reference are designed to assist the two statutory officers in discharging their functions with regard to the Executive report on 4 June. The investigation and any subsequent report is entirely the responsibility of the Chief Financial Officer and Monitoring Office and variations to, or deviations from, these terms of reference should be agreed by those two statutory officers.

**B Report of the Portfolio Holder for Tourism and Leisure, 5<sup>th</sup> November 2002**

**PAPER C2**

Purpose : For Decision

Committee : **EXECUTIVE**

Date : **5 NOVEMBER 2002**

Title : **EXTERNALISATION OF WIGHT LEISURE - UPDATE**

**REPORT OF THE PORTFOLIO HOLDER FOR TOURISM AND LEISURE**

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**1. SUMMARY/PURPOSE**

1.1 Members are invited to review the progress made to date in respect of the externalisation of Wight Leisure to a Not for Profit Distributing Organisation (NPDO), Wight Leisure Limited (WLL).

**2. BACKGROUND**

2.1 The meeting of the Executive on 21 May 2002 agreed to proceed with the externalisation of Wight Leisure. It also agreed to ask the Economic Development, Planning, Tourism and Leisure Services Select Committee to oversee the negotiations between the Council and the embryonic Not for Profit Distributing Organisation (NPDO) to ensure the completion of the transfer as effectively and quickly as possible.

2.2 The Select Committee chose to discharge its role by meeting informally to facilitate full and frank debate over all of the issues surrounding the transfer, and has met on many occasions in this capacity. It has received a presentation from Wight Leisure in respect of its proposals following externalisation and has received advice from officers and consultants acting on the Council's behalf.

2.3 The Select Committee met on Monday 28<sup>th</sup> October 2002 and as part of its order of business it formally adopted as recommendations to the executive all of the informal guidance that it had given to officers and which is set out below.



**3. PROGRESS TO DATE**

- 3.1 This report summarises some of the work completed to date, but especially considers some of the works outstanding. It is important to note that this report very much reflects “work in progress” and some of the following comments should not be read as being the final position.**

**4. LEVEL OF GRANT REQUESTED**

- 4.1 A first business plan proposal for the NPDO was received from Wight Leisure on 20 June 2002 and indicates a grant requirement which is approximately 1% above the existing Council subsidy for the services provided through it. This was after allowing for anticipated savings in VAT and National Non Domestic Rates (NNDR) being allocated to other areas of work not presently funded or thought to be under-funded.
- 4.2 The informal meetings of the Select Committee agreed that any increase in funding was unacceptable.

**5. DELIVERY OF THE BEST VALUE IMPROVEMENT PLAN**

- 5.1 A key driver in the decision to externalise Wight Leisure was that it offered the best way forward in the delivery of its Improvement Plan, developed as part of the service’s Best Value Review. It is unclear from the first business plan proposal how Best Value could be achieved through the improvement plan considered within it. It has been suggested that some of the improvements would be funded from the NNDR savings.
- 5.2 The informal meetings of the Select Committee agreed that an explicit link to the improvement plan should be made in the NPDO’s business plan.

**6. SERVICES TO BE TRANSFERRED TO THE NPDO**

- 6.1 The first business plan proposal identified the range of services which Wight Leisure is intending to manage and a number which would be better managed by the Council because of their synergy with other Council services. The apparent difficulty with the suggestion being that the Council would be left with an increased cost by taking on the residual services. It has however been suggested that these services are cash neutral and the matter is under review.
- 6.2 The informal meetings of the Select Committee agreed to the suggested services to be transferred subject to there being no additional cost to the Council in the residual services.

**7. NATIONAL NON-DOMESTIC RATE (NNDR) RELIEF**

- 7.1 The ability of the newly formed NPDO to attract mandatory (80%) rate relief on the buildings it will occupy is a central strategy in its proposals to deliver**

**the best value improvement plan and other service improvements. There remains some uncertainty about whether this NPDO will attract this benefit.**

- 7.2 The view of the County Treasurer follows guidance from the DTLR (as was), in that the NPDO must be established “exclusively for charitable purposes” and must use the property concerned for these purposes to receive mandatory rate relief. A NPDO that acts as a charity would be entitled to exemption from taxes under the provisions of section 505 of the Income and Corporation Taxes Act 1988 and would have a letter from the Inland Revenue confirming its exemption. Such a letter would also be sufficient to grant mandatory rate relief.
- 7.3 Wight Leisure have made an application to the Inland Revenue for an exemption from corporation tax but as yet have not had this confirmed. It is however confident that this will be forthcoming. Given the importance of the availability of the savings on NNDR to the success of the transfer, the Council’s legal advisor has been asked to give a view as to whether it thinks such a letter may be forthcoming. It is currently reviewing both the rules and certificate of incorporation of the NPDO for this purpose.
- 7.4 The informal meetings of the Select Committee agreed that the eligibility of the NPDO to receive mandatory NNDR relief must be confirmed prior to any transfer proceeding.
- 7.5 Following the receipt of the first business plan proposal, the Property Services Department have been successful in achieving a reduction in the rateable value of some of the properties associated with the transfer. The net effect of this is to reduce by £19,000 the level of savings to be generated from mandatory NNDR relief, were it to be achieved.

## **8. EFFECTS ON VAT**

- 8.1 The first business plan indicates that the NPDO may be slightly better off in VAT terms than at present. The Council’s VAT advisors are unable to confirm this as yet and indeed, have suggested that, as the difference is so slight, it might be in the opposite direction. The informal meetings of the Select Committee agreed that the VAT position must be absolutely clear prior to any transfer proceeding.

## **9. MEDINA LEISURE CENTRE AND THEATRE**

- 9.1 **The Leisure Centre and Theatre are major contributors to the first draft business plan in every aspect. The Council through Wight Leisure, occupies the premises under the terms of a dual use agreement which is in need of a formal renewal. This must be done prior to any transfer and will involve all parties to reach a new common agreement.**

### **10. LEGAL AGREEMENTS**

10.1 The legal agreements comprise three main documents which have been prepared by the Council's legal advisor. All are substantially complete in draft and were delivered to the NPDO's Solicitor on Wednesday 23 October.

- The Transfer Agreement; sets out the assets which the Council will transfer to the NPDO.
- The Funding Agreement sets out the basis on which the Council will fund the NPDO on an annual basis. The final business plan when produced by the NPDO will form a core part of this document. The informal Select Committee meetings have reviewed this document and have specifically recommended that:-
  - the NPDO be paid quarterly in advance
  - the quarterly payments be profiled to match the cashflow needs of the NPDO
  - the NPDO should comply with the reporting requirements of the Charity Commission which are more exacting than those of the Registrar of Friendly Societies.
  - If the transfer proceeds on 1 January 2003, then the first year agreement should be for a period of 15 months.
- The Lease Agreements; a separate agreement will be required for each facility to be occupied by the NPDO. Leases will be for a period of 15 years (3 months) with appropriate break clauses, should, for example the Council wish to develop a facility or the funding agreement be cancelled. Officers from Wight Leisure and the Council have agreed the boundaries of each facility to be included.

### **11. CENTRAL CHARGES**

11.1 The first business plan proposal indicates that the NPDO anticipates taking 100% of the central charges currently allocated by the Council to Wight Leisure. At the same time the NPDO gives no indication of wishing to purchase any of these services from the Council in the short-term. It is anticipated that there will be some residual effect on the Council's existing services which is still being fully evaluated.

### **12. CLIENT OFFICER**

**12.1 Members of the Select Committee meeting informally felt there would be a need for a Council policy/strategy officer to deal with all issues surrounding**

**the NPDO and the services provided by it. Furthermore, it was felt that this post should be funded in part (£15,000) by the anticipated savings on NNDR.**

**13. NEXT STEPS**

**13.1.1 The Council's consulting team (leisure, legal, VAT) are continuing to seek clarification from Wight Leisure in respect of the issues raised in this report and many others of specific detail which have not been covered here.**

**13.2 It is necessary for this group to receive a final business plan relating to the NPDO transfer, so that it can be signed off and recommended to the Council as a working document that is realistic, achievable, sustainable and focused on Best Value.**

**14. FINANCIAL IMPLICATIONS**

14.1 A key output of the externalisation is that ultimately it should not cost the Council any more money to provide the services through an NPDO than it did through Wight Leisure. The informal advice of the Select Committee has to date been consistent with this output.

**15. LEGAL IMPLICATIONS**

15.1 The transfer is complex transaction and external legal advice has been procured in order to ensure that the transfer is lawful and protects the council in terms of it's continuing liabilities and in terms of achieving the policy objective of a best value and continually improving leisure services provision.

The recommendation to note progress does not raise any legal issues. Further legal advice will be given to the Executive at the point that further decisions fall to be taken.

**16. OPTIONS**

(i) That progress as set out in the report is noted

(ii) That a further report, either setting out decisions which need to be taken by the Executive, or informing members of further progress, be brought to the meeting of the Executive on 3 December 2002.

**17. RECOMMENDATIONS**

(i) and (ii)
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**BACKGROUND PAPERS:**

- 1. **Notes of informal meetings of the Economic Development, Planning, Tourism and Leisure Services Select Committee.**
  2. **File: Wight Leisure Externalisation (Contain confidential information)**

Contact point : John Metcalfe, Head of Community Development and Tourism ( 823825

D PETTITT  
Strategic Director  
Education and Community Development

M A JARMAN  
Portfolio Holder of Tourism and Leisure

**C Schedule of those Interviewed**

Kevin Cooper	Finance and Administration Manager, Wight Leisure
Mike Fisher	Chief Executive and Head of Paid Services
John Metcalfe	Head of Community Development and Tourism
Cllr John Fleming	Portfolio Holder, Tourism and Leisure
John Lawson	Head of Legal and Democratic Services
Paul Wilkinson	Head of Finance
David Pettitt	Director, Education and Community Development
Annie Horne	Managing Director, Wight Leisure
Alistair Drain	Head of Select Committee and Best Value Support

## **D Bibliography**

Minutes (including transcripts of meetings where minutes were not self-explanatory) and related Reports as follows:

- Policy Committee – 27<sup>th</sup> July 1998;
- Meetings of the Executive as follows;
  - 9 30<sup>th</sup> November 2000;
  - 10 3<sup>rd</sup> May 2001;
  - 11 21<sup>st</sup> August 2001;
  - 12 26<sup>th</sup> February 2002;
  - 13 7<sup>th</sup> May 2002;
  - 14 21<sup>st</sup> May 2002;
  - 15 5<sup>th</sup> September 2002;
  - 16 8<sup>th</sup> October 2002;
  - 17 5<sup>th</sup> November 2002;
  - 18 4<sup>th</sup> June 2003.

Notes of meetings of Wight Leisure Working Party;

Council's Scheme of Delegation;

Financial Regulations;

Contract Standing Orders;

Procurement Strategy dated October 2002.

### **E Institute Of Public Finance**

#### **ABOUT IPF**

The Institute of Public Finance Ltd (IPF) is the commercial trading arm of the Chartered Institute of Public Finance and Accountancy (CIPFA). With a turnover in excess of £14 million, over 120 core staff and 200 associate consultants to call upon IPF is the foremost provider of public sector services in the country. Being wholly owned by CIPFA, IPF is independent from any service supplier and therefore having no vested interest can give advice on the merits of each individual situation.

IPF shares the commitment of its clients to excellence in public service. Any profits that IPF makes are returned to CIPFA for research and development work. Our approach to the provision of consultancy support is twofold. We:

Provide added knowledge, skills and understanding to support continuous improvement and the response to changing environmental requirements.

Encourage the transfer of this knowledge and associated skills to our clients so they become more self-sufficient in the future.

IPF's services encompass all strategic and operational management issues within the public sector. We provide a wide range of services so our Consultants can access specialist expertise and data for the benefit of our clients. IPF services include:

IPF Consultancy, which is specifically resourced to respond to the special assignment needs of public sector organisations.

Best Value Advisory Service, which informs and guides managers from several hundred English, Welsh and Scottish Local and Police Authorities in how to respond successfully to the demands of Modernisation.

IPF Training Consultancy, who provides financial, audit, management and business skills training for the public sector.

Benchmarking Services provide a metric benchmarking service to Local and Police Authorities and facilitates an accelerated process benchmarking service.

CIPFA Quality Forum, which helps managers to implement strategies for service quality and disseminates good practice.

CIPFA Revenues and Benefits Service promotes good practice and provides training and consultancy in Revenues and Benefits.

Better Governance and Counter Fraud Forum stimulates discussion about governance and counter fraud issues and disseminates best practice.

Local Government Cabinet Members Forum helping Local Authorities to establish sound working practices within the cabinet style local government.

The Tax Advisory Service providing advice on tax implications, changes to legislation, and the review of accounting systems and procedures.



## **WIGHT LEISURE EXTERNALISATION**

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Statistical Information Service, which produces over 30 statistical surveys each year covering all the main activities of local government.

The Financial Information Service provides information on all aspects of financial management in Police, Fire and Local Authorities.

Policy Studies undertake bespoke research on public services.

**F Advice from Leading Counsel**

**ISLE OF WIGHT COUNCIL: EXTERNALISATION OF WIGHT LEISURE**

**OPINION**

1. I am instructed to advise the Isle of Wight Council ("the Council"). The Council operates various leisure facilities, whose management is currently undertaken by a division of the Council known as Wight Leisure, formed as a direct service organisation in 1997. The Council has for some time contemplated the "externalisation" of Wight Leisure. Rather than contract out the relevant services to a profit-making private sector company, the Council has had in mind the transfer of the activities of Wight Leisure to a not-for-profit organisation (NFPO) which would be grant-aided by the Council, but would (so it has been hoped) gain financially from having charitable status and thus from enjoying relief from national non-domestic rating and from VAT, as well as being able to raise finance externally without being subject to the same constraints as bind the Council.
2. Earlier proposals for a move in this direction were shelved pending a best value review of the leisure service which reported in May 2002. The Council's Executive accepted the conclusions of the review and agreed that externalisation should take place. It was contemplated that the NFPO to which the transfer would be made would be Wight Leisure Ltd. ("WLL"), an industrial and provident society formed in June 2001, and that WLL would be owned and operated by existing managers and staff of Wight Leisure - and so that there would in effect be a form of management buy-out of the Wight Leisure undertaking. However, WLL has never engaged in any activity since its incorporation, and its directors and members are still personnel from Leisure Partners Ltd. ("LPL"), a company which has provided advice to Wight Leisure. The costs of establishing WLL have been funded by LPL.

3. The Council has now come to the conclusion that there are significant flaws in the way in which the externalisation project has been pursued to date. The project may or may not be pursued further on a revised and strengthened basis. Meanwhile, the Council has sought to examine the deficiencies in the previous process. In that connection, I am asked to advise upon one discrete issue, namely whether it has been or would be lawful for the Council to meet certain expenditure.
  
4. The expenditure in question is set out in a table at page 16 of a draft report produced by those carrying out the review. It amounts to £81,648 as there set out, with one solicitors' bill as yet unquantified. Of that, £31,980 (plus the unquantified bill) relates to various forms of professional advice intended for the benefit of WLL: work done by LPL in "supporting [the] process of creation" of WLL; advice on charitable status and tax implications; insurance advice; human resources advice; and legal advice<sup>1</sup>. The remaining £49,668 relates to advice provided to the Council, including support for the leisure services "client side", legal advice, and the costs of the independent review carried out by Institute of Public Finance Ltd. which led to the decision to cancel the externalisation project in its existing form. I understand the position to be that the payment of £20,833 to LPL has been made, and charged to the Council's revenue account. I am unclear as to whether the reference to the remainder having been "deferred as debtors" indicates that those bills have not been paid, or rather that they have been paid but are currently treated in the Council's accounts as monies which ought to be repaid to it. I gather that the original assumption was that all this expenditure would ultimately be met by WLL.
  
5. As I understand it, there are two reasons why doubt has arisen as to the propriety of the Council meeting this expenditure. The first is uncertainty as to

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<sup>1</sup> Plus a trivial sum for a subscription whose nature I do not know.

whether the Council has properly authorised such expenditure. The second is whether the Council has the necessary power to meet the expenditure.

6. As to authorisation, I see no particular difficulty with the Council's costs incurred in obtaining advice for itself. It probably suffices to say that I agree with the analysis contained in paragraphs 4.4.3.1 to 4.4.3.9 of the draft report. So far as meeting the costs of advice for WLL are concerned, I have greater difficulty in concluding that any of the resolutions which I have seen is capable of authorising such expenditure in itself. The draft report suggests that such expenditure may, however, fall within the scope of officers' delegated powers. I would agree that, given the very general terms of the resolutions passed by members from time to time, there was scope for officers to exercise delegated powers in relation to this matter, provided that any expenditure so authorised was consistent with existing budgets. I have not seen the relevant provisions of the Council's scheme of delegation as they stood at the material time. Nor indeed is it clear from the material before me which officers took the decision that the Council should meet the WLL expenditure in question, or when that decision was taken. It follows that I can say only that the WLL expenditure is capable of having been properly authorised, but that it is presently unclear whether it was in fact so authorised.
  
7. As to the Council's powers, I again cannot see why there should be any difficulty in relation to the £49,668 expended on advice for the Council itself. If nothing else, it was incidental to or calculated to facilitate the future securing of recreational facilities, either directly by the Council under s 19(1) of the Local Government (Miscellaneous Provisions) Act 1976, or on a grant-funded basis under s 19(3) of that Act, or by way of a contract under the Local Government (Contracts) Act 1997 – the advice was going to assist the Council to decide which of those routes it should adopt, and how to follow

such a route lawfully and effectively. In the circumstances it was in my view authorised by s 111 of the Local Government Act 1972.

8. The harder question concerns the expenditure on the advice for the benefit of WLL. In that respect the two statutory provisions which have been identified as potentially relevant are s 19 of the 1976 Act and s 2 of the Local Government Act 2000. I agree that these are the relevant provisions.
9. The Council's relevant powers under s 19 are as follows. Under s 19(1), it may itself provide recreational facilities. Under s 19(3)(a), it may contribute by way of grant or loan towards the expenses incurred or to be incurred by any voluntary organisation in providing such recreational facilities. A "voluntary organisation" is defined to mean a person carrying on or proposing to carry on an undertaking otherwise than for profit.
10. In this case, reliance on s 19(1) is not possible, even read in conjunction with s 111 of the Local Government Act 1972. The contemplated provision of leisure facilities was not to be by the Council, but by WLL<sup>2</sup>. It is clear that WLL was not to be the mere agent of the Council. The case is therefore precisely comparable in this respect to *Credit Suisse v Allerdale BC* [1997] QB 306.
11. So far as s 19(3) is concerned, WLL satisfies the definition of a voluntary organisation. I will also assume for present purposes that all the activities

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<sup>2</sup> The Council is of course currently providing, and was at the material time providing, recreational facilities through Wight Leisure (which is legally the same body as the Council). But the expenditure in question had nothing to do with this direct provision. Rather, it was incurred specifically in contemplation of such direct provision ceasing.

which were to be externalised fell within the scope of s 19<sup>3</sup>. Further, the payment of expenses on behalf of another can in my view amount to the making either of a grant or of a loan, depending upon whether or not the cost is ultimately to be repaid. However, the expenses in question have to be incurred “in providing . . . recreational facilities”. I am inclined to think that this wording is broad enough to permit a local authority to contribute towards a voluntary organisation’s relevant overhead costs as well as what might be called its direct expenditure on the facilities themselves. However, the expenditure here is at one further remove from the actual provision of recreational facilities, because the costs concerned seem in reality to have been in the nature of start-up costs. It can be argued that if, as presumably was to be the case here, the voluntary organisation’s sole activity was to be the provision of relevant recreational facilities, then all its expenses, of whatever nature, must be incurred in providing such facilities. But on balance my view is that s 19(3) does not authorise such expenditure.

12. There is another point which arises on s 19, namely whether the advice in question was really being provided for WLL, or whether it was being provided for the staff of Wight Leisure, not in their capacity as Council employees, but in their capacity as prospective participants in WLL – for example, advice to them about the viability of the proposed WLL operation. I do not feel able on present information to say whether this is factually the case, but in my view such expenditure would not be authorised by s 19(3).

13. For these reasons, although the case may be a borderline one, I do not think that the Council should rely upon s 19 as authorising this expenditure. Further, the objections to the use of s 19 are such that they would not be met by the Council waiting until WLL eventually became operational and then making a

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<sup>3</sup> I do not have any detailed information about the activities of Wight Leisure. Looking at Annex 1 to the consultant’s brief appended to the draft report, everything listed there does look to fall comfortably

grant to WLL in an amount equivalent to these costs – although there could be no objection to the Council making a grant designed to meet a higher proportion of WLL’s operational costs than might otherwise have been the case, so permitting WLL in practice to apply other income to the meeting of these costs.

14. Turning now to s 2 of the 2000 Act, it seems to me that the object of the externalisation exercise was to promote or improve at any rate the social well-being of the Isle of Wight, if not also its economic and/or environmental well-being. The idea was to generate additional resources to be applied to the provision of recreational facilities on the Island. It follows, in my opinion, that steps calculated to make the externalisation happen were properly capable of being viewed by the Council as likely to achieve relevant objects. The s 2 power expressly includes power to give financial assistance to any person: see s 2(4)(b). If WLL could not be expected to meet its own start-up costs, then I see no reason why the meeting of those costs should not in principle have been a valid use of the s 2 power.

15. Nor do I think that s 3(1) of the 2000 Act creates any difficulty: on the approach taken in *R (J) v Enfield LBC* (2002) 5 CCLR 212, the mere fact that s 19 of the 1976 Act is a power which exists in the field, yet does not empower the expenditure in question, does not amount to a prohibition, restriction or limitation within the meaning of s 3(1).

16. My understanding is that the expenditure with which this Opinion is concerned was all incurred after s 2 came into force, on 18 October 2000. If that is wrong, then clearly the 2000 Act could not be relied upon as authorising any earlier expenditure – although it would in my view be permissible to provide financial assistance by way of reimbursement of expenditure incurred by a third party prior to that date, if the reimbursement is itself likely to promote

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within s 19, with the exception of Ryde Harbour, as to which I would have to reserve my opinion

well-being (e.g. by allowing the third party, here WLL, to proceed with a beneficial project which would otherwise fold under the burden of debt).

17. The greater difficulty is that the matter does not appear to have been looked at in terms of s 2 at the time when the relevant decisions were made. It will be borne in mind that, if the analysis of the authorisation question set out above is correct, then we are here concerned with decisions taken by officers (albeit on so far unidentified occasions). There are three aspects to this: the necessity that the decision-maker should actually form the view that the expenditure in question is likely to achieve the s 2(1) objectives; the requirement under s 2(3) to have regard to the community strategy prepared under s 4; and the requirement under s 3(5) to have regard to guidance issued by the Secretary of State.

18. So far as the community strategy is concerned, I gather it did not exist until October 2002. The non-existence of a strategy is not a bar to the use of the s 2 power, and simply means that there is nothing to have regard to. It is not clear to me whether the relevant decisions concerning this expenditure were all taken before October 2002 or not.

19. So far as the ministerial guidance is concerned, it seems to me that the current guidance has very little if any bearing on the present matter, and accordingly that (assuming no regard was had to it) this is unlikely to have invalidated a decision to incur the expenditure.

20. However, I do think that the failure to direct attention specifically to the s 2 criteria (assuming that the officers in question did not do so) makes it hard to justify the expenditure under the 2000 Act as matters stand.

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on present information.



21. If it is right that it is difficult as matters stand to point to a valid decision to exercise 2000 Act powers, the question is whether that can now be put right. I see no reason why what my Instructions describe as an ex post facto grant should not be made. It is simply that, if reliance is to be placed upon the s 2 power, the decision-maker will have to be satisfied that the expenditure is likely to promote well-being *as matters now stand*. If the intention is still to proceed with externalisation to WLL, then that is a conclusion which may not be very hard to reach. If the externalisation is not to proceed, then the benefit to the Council may be harder to see, so far as the meeting of outstanding bills is concerned<sup>4</sup>. Where the Council has already met costs, however, and there is no realistic prospect of recovering them from anyone else, the matter is really of purely academic interest, although the matter should probably be brought to the attention of members.

## CONCLUSIONS

22. In my view there are no problems as to the legality of the expenditure incurred by the Council on advice for itself.

23. Expenditure on advice for WLL was capable of being authorised under s 2 of the 2000 Act, but probably not under s 19 of the 1976 Act.

24. It is unclear whether any valid decision to expend money on advice for WLL under s 2 of the 2000 Act was ever taken. There was no such decision by members. If there was a decision by officers to meet such expenditure, it is unclear whether it had proper or any regard to the terms of s 2.

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<sup>4</sup> But if this would mean that the providers of the advice would be left out of pocket in circumstances where they would justifiably feel that the Council had misled them, then it might be legitimate to meet the costs on some other basis: either because it would promote well-being by avoiding damage to the Council's reputation; or because it would serve to avoid a legal claim which might otherwise be made; or by way of compensation for maladministration (see s 92 of the 2000 Act).

25. A further decision is therefore advisable. In principle, there is no objection to an ex post facto grant, if that is still likely to promote well-being: see further paragraph 21 above.

NIGEL GIFFIN QC

9 January, 2004

11 King's Bench Walk  
Temple  
London EC4Y 7EQ

IN THE MATTER OF THE  
ISLE OF WIGHT COUNCIL

AND IN THE MATTER OF THE  
EXTERNALISATION OF  
WIGHT LEISURE

OPINION

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Ref. 1X50/501/JL/KET

**G Brief to PMP**

**ISLE OF WIGHT COUNCIL**

Consultant's Brief

for

The provision of advice to the Council to enable it to  
transfer the management of its Leisure Services to a  
Not for Profit Organisation

## ISLE OF WIGHT COUNCIL

Consultant's Brief

for

The provision of advice to the Council to enable it to transfer the management of its Leisure Services to a Not for Profit Organisation

### 1. Background

- 1.1 The Isle of Wight Council has resolved to pursue the formation of a Not for Profit Organisation (NFPO) to undertake the management of the Council's leisure services which are presently managed by its leisure DSO - Wight Leisure.
- 1.2 In coming to this decision the Council agreed its objectives in the transfer are:-
  - a) To protect and improve upon the provision of high quality leisure facilities and services for the Island.
  - b) To protect Island jobs for Island people.
  - c) To attract investment into the leisure facilities from the private sector and other partnership funding opportunities.
  - d) To meet Best Value criteria and offer value for money.
  - e) To ensure that the Council's subsidy for leisure services is provided in the most effective manner.
  - f) To enable the Council to benefit from the future successes of any leisure investment.
  - g) For the Council to retain ownership of all facilities.
  - h) For the Council to specify minimum public availability of facilities and levels of service provision.
- 1.3 The managers of the DSO are undertaking works in connection with the establishment of the NFPO which is likely to take the form of an Industrial and Provident Society.
- 1.4 The range of services to be included in the transfer are set out in Annex 1. These services in total attract approximately 2.7 million customers, have a turnover of £3.6 M and receive a Council subsidy in the order of £1.5 M per annum.
- 1.5 Whilst the DSO currently manages those services set out in Annex 1, it is not responsible for their maintenance which rests with other Council departments. The Council however is keen for the NFPO to also take responsibility for the maintenance of the service sites.

### 2. Statement of Problem

- 2.1 The Council is keen to conclude the transfer of services to a NFPO by 1<sup>st</sup> October 2001.

- 2.2 The Council has only limited experience of similar transfers and therefore requires detailed guidance on the steps that it must take to ensure that the transfer proceeds with due diligence.
- 2.3 The Council has insufficient manpower with which to prepare a funding agreement with the NFPO and also the specification of services to be provided which will be an integral part of this agreement.
- 2.4 The Council would like an independent view of any proposals to be made by the DSO for the management of the services as a Trust to ensure that they offer best value to the Council, and are in accordance with its objectives.
3. Project Objectives:
  - 3.1 To review the work undertaken to date by the Council and provide guidance on the outstanding works to be completed to achieve the transfer by 1<sup>st</sup> October 2001.
  - 3.2 To undertake an audit of the current level of service being provided by Wight Leisure, especially in relation to pricing policy, programming policy, service standards and community involvement and accessibility.
  - 3.3 To undertake a detailed review of the current management arrangements at Medina dual use centre and to make recommendations as to how the facility can be incorporated into the arrangements with the NFPO.
  - 3.4 To undertake a detailed review of the current management arrangements in relation to special events and to make recommendations as to how provision for this service can be satisfactorily incorporated into the arrangements with the NFPO.
  - 3.5 To consider through an audit of the service sites a programme of desirable improvements to the sites.
  - 3.6 To consider through discussions with appropriate Council officers and other interested parties minimum service standards and desirable service improvements that the NFPO should be required to achieve.
  - 3.7 To evaluate the outcomes of 3.2 to 3.6 inclusively in the context of the Council's overall mission and objectives and the Education and Community Development directorate's strategic plan and to make recommendations as to the contents of the funding agreement and any other agreements thought to be desirable accordingly.
  - 3.8 To make recommendations as to the form and content of the funding agreement and any other necessary agreements between the Council and the NFPO, including the minimum level of service required to ensure the Council and directorate's objectives are achievable through the NFPO.
  - 3.9 To evaluate the recommendations in 3.7 against any proposals made by the NFPO.
  - 3.10 To prepare the funding agreement and other agreements between the NFPO and the Council.

#### 4. Project Methodology

- 4.1 The Consultant shall provide the Council with an outline of the methodology it proposes to use to realise the objectives set out in this brief.

#### 5. Project Reporting

The Consultant will be required to report as follows:-

- 5.1. An interim report setting out its recommendations as to the form and content of the funding agreement (and any other identified agreements) between the Council and the NFPO. This report shall also include an analysis of these recommendations against the proposals of the NFPO.

The interim report shall be in key point note format and shall indicate the general conclusions to be drawn from the research.

- 5.2 A final narrative report summarising how the project was conducted and including full copies of all of the agreements to be used as separate appendices to the main report.

Six hard copies and one electronic copy in Microsoft Word format of this report are required.

- 5.3 A presentation of the final report, including an outline of the main aspects of the proposed agreements, to a committee of the Council.

#### 6. Timescales

- 6.1 The interim report is to be completed and with the Council by no later than Monday 30<sup>th</sup> July 2001.

- 6.2 The final narrative report must be completed and with the Council by no later than Friday 24<sup>th</sup> August 2001.

- 6.3 The presentation to Council will take place in the week commencing Monday 3<sup>rd</sup> September 2001.

#### 7. Liaison with the Council

- 7.1 When dealing with the Council, its staff, Officers and Members, the Consultant will be required to liaise with a nominated Officer of the Council.

- 7.2 The Officer nominated by the Council to liaise with the Consultant shall be the Assistant Director of Education and Community Development.

#### 8. Cost of the Works and Personnel to be Employed

- 8.1 The Consultant shall provide the Council with a breakdown of costs for undertaking the project including a day rate figure for undertaking works without this brief but which may be identified as being of benefit to the project.

- 8.2 A list of personnel to be employed on the project, their role within it, and a statement of their qualifications and experience relevant to it must also be supplied by the Consultant at the same time as the submission of the project costs.
9. Previous Experience
- 9.1 The Consultant shall supply a list of previously completed engagements which are of a similar nature to this project. This list shall include a statement as to the nature of the project, the employing organisation, the name and contact details of the client officer and also the appropriate value of the works undertaken.
10. Implementation
- 10.1 Project costs, project methodology and personnel details shall be submitted to the Council by noon on Wednesday 13th June 2001.
- 10.2 The Consultant will receive written acceptance of the same in the week commencing Monday 18<sup>th</sup> June 2001.
- 10.3 No deviation shall be allowed from the tendered price, methodology, or personnel unless agreed in advance by the nominated officer and confirmed in writing by the same.

**JOHN METCALFE**  
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### **Isle of Wight Council Leisure Services to be transferred to a NFPO**

1. **The Heights Health and Leisure Base**  
Comprising a 25m pool with a learner pool adjacent, 4 squash courts, bar/bistro, hair salon, 20 station fitness studio, beauty room and sauna/jacuzzi facilities.
2. **Waterside Pool and Café**  
Comprising a 25m pool with a retractable roof and also two outdoor small learner pools. The café is in an adjacent, detached building.
3. **Medina Leisure Centre (Dual use facility at Medina High School)**  
Comprising a sports hall, gymnasium, climbing wall, 20 station fitness studio, a 25m pool including waterslide with learner pool adjacent, theatre and theatre dressing rooms, tennis courts, grass pitches and floodlit hard play area.
4. **Seaclose Park Recreation Ground**  
Comprising seven football pitches, two cricket pitches, 3 hard tennis courts, floodlit hard play area, floodlit skate park, associated changing accommodation.
5. **Appley Golf Course**  
A 9 hole par three pay and play facility.
6. **Northwood Park Facilities**  
Incorporated into the park grounds and comprising 6 hard tennis courts, bowling green and pavilion and an 18 hole putting course. Also the management of Northwood House situated in the grounds.
7. **Esplanade Gardens, Shanklin**  
An 18 hole putting course.
8. **Ventnor Park Facilities**  
An 18 hole putting course.
9. **Sandham Gardens Facilities**  
Incorporating 5 hard tennis courts, a crazy golf course and an 18 hole putting course.

10. **Puckpool Park Facilities**  
Comprising a bowling green, two tennis courts, crazy golf and putting areas.
11. **Browns Golf Course**  
Incorporates 2 pitch and putt courses and a long putting course, also a café/clubhouse facility.
12. **Ryde Harbour**  
With berthing for up to 80 boats.
13. **Hire of Sports Pitches**  
Incorporates 6 sports pitches and 3 changing pavilions across the Island.
14. **Westridge Squash Courts**  
Comprising 7 courts, 2 with glass backs for spectator viewing.
15. **Ryde Boating Lake and Paddling Pool**  
Comprising 24 peddalos.
16. **Shanklin Cliff Lift**  
Comprising 2 lifts having total capacity of 16 persons.
17. **Dotto Trains**  
Comprising 3 road trains in tourist locations.
18. **Community Halls**  
Incorporating 3 halls in Cowes area.
19. **Events Programme**  
Generation, implementation and management of a £250,000 p.a. events programme through direct provision of, or support to partner-led, events. The programme comprises activities for community developments and promotional purposes.

### WIGHT LEISURE LIMITED BUSINESS PLAN

#### INITIAL COMMENTS

This Note represents some initial thoughts on the WLL business plan sent to PMP Consultancy on 20 June 2002. These are only initial comments prior to a more detailed review and feedback at beginning of August, we have not at this stage had a detailed review of the financial projections and the NNDR and VAT proposals.

#### Comments

1. Clearly the business plan has been significantly developed since last year and it is encouraging to see a range of targets relating to the BVR and continuous improvement. We need to confirm with the Council that these targets meet their objectives and have not as yet reviewed the BVR.
2. The business plan appears to be asking for £1.82 million grant which increases year on year, as opposed to circa £1.64 million last year. We are not clear on the reasons for this. It would be useful to understand the existing costs and how they relate to the £1.82 million
3. Whilst the business plan identifies proposed developments and indeed commits to the first development at Westridge – it is not clear what impact this will have on the funding required. Our understanding is that the Council are seeking to reduce their grant over time or to pass over the maintenance liability for facilities. The business plan does not appear to identify how this will occur, other than to highlight it as one of the key benefits
4. There is also no further plan for the next phase of developments both in terms of when they are to take place and the likely impact on the grant funding requirement
5. It will be important to clarify the basis of the funding agreement – our understanding is that it is to be a one year funding agreement with an intention to grant aid for three years – not a guarantee

These are some of the initial comments but I am sure will form the focus of our discussions and review to achieve a level of grant and funding that satisfies the Council they are receiving Best Value – whilst the BVR identified the NPDO as the way forward, this does depend on the level of grant.

## ISLE OF WIGHT COUNCIL PROPOSED NPDO TRANSFER

### FEE PROPOSAL

01 August 2002

This note sets out our understanding of the key tasks required for the effective delivery of the transfer of leisure facilities to the new NPDO. This is based on the following assumptions:

- Transfer to take place by 10 November 2002
- PMP will act as project managers and lead the negotiation with Wight Leisure on behalf of the Council
- Leases will be prepared by lawyers appointed separately (we need to confirm what their terms of appointment are). PMP would be responsible for the project co-ordination and seeking the effective integration of the leases into the overall transfer structure
- The overall legal structure of the transfer to be confirmed by PMP (we assume there will be a need for a transfer agreement, funding agreement, dual use agreement in addition to the leases)
- There are no service level agreements to be drafted for services provided by the Council
- We would liaise with District Audit and Customs

The team to deliver the project would be as in the original proposal (with the replacement of Andrea Murphy with Caroline Bullock).

### Key Tasks

We have set out below the key tasks to be undertaken in the project:

- Overall Project Management
- Reviewing the Business Plan (and proposed structure for the NPDO), to include a review of VAT and NNDR proposals and preparation of a bullet point report for the Informal Select Committee, identifying key issues and the basis for negotiation with Wight Leisure
- Review NPDO rules and corporate governance to ensure the relationship with the Council is sound and does not break Local Government law
- Consultation on TUPE, supporting the TUPE transfer and facilitating the admission to the pension fund (we need to clarify whether our support is required for this) NOT REQUIRED
- Drafting and preparing the legal agreements (including dual use, funding and reviewing the leases)
- Reviewing of legal agreements to confirm VAT efficiency
- Negotiating with Wight Leisure on the proposed level of grant and the various legal agreements
- Liaising with external organisations (for example, District Audit and Customs)
- VAT registration of WLL, help with WLL first VAT return, devise partial exemption method for WLL (we will need to clarify whether we are expected to undertake this or whether WLL are doing this?) NOT REQUIRED
- Reporting and liaising with the select committee

- Finalising and confirming the transfer

### Project Fees

We anticipate that our fees will be between £35,000 and £51,000, excluding VAT and expenses, to undertake the above tasks however these will be dependent on a number of factors, in particular:

- The terms of reference for the lawyers drafting the lease – for example, will they be doing all the conveyancing including any issues about car parking, licences, etc? are they preparing VAT efficient documents? Do the leases meet section 123 and do they follow a model proposed or requested by District Audit? ALL MATTERS TAKEN INTO ACCOUNT
- The level of negotiation we will need to undertake with Wight Leisure over the business plan and legal agreements (we have allowed for between 5-10 negotiating days, involving various people) ALLOW 3 DAYS
- The amount of liaison with district audit and customs LIMITED
- The level of reporting and liaising with the select and other committees

I suggest we agree a fee ceiling and manage the project within this budget, working on a time charged basis in accordance with the following daily and hourly rates:

Team Member	Daily Rate	Hourly Rate
Robin Thompson (PMP Consultancy)	£850	£125
Leonie Cowen (Leonie Cowen Associates)	£900	£150
Kim Jephart (KPMG)	£1350	£195
Marcus Kingwell (PMP Consultancy)	£600	£85
Caroline Bullock (PMP Consultancy)	£350	£50

Following our project planning meeting we will be able to refine our proposal and confirm the fee ceiling and number of days for each of the team members and estimated fees for each task. We will then prepare monthly statements identifying the work undertaken and the amount remaining against each task to ensure we remain on budget.