# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FOREWORD</strong></td>
<td>01</td>
</tr>
<tr>
<td>1. <strong>INTRODUCTION AND CONTEXT</strong></td>
<td>02</td>
</tr>
<tr>
<td>2. <strong>COMMISSIONING FOR OUTCOMES</strong></td>
<td>05</td>
</tr>
<tr>
<td>3. <strong>MANAGEMENT OPTIONS OVERVIEW</strong></td>
<td>10</td>
</tr>
<tr>
<td>4. <strong>PRE-DECISION CHECKLIST</strong></td>
<td>29</td>
</tr>
</tbody>
</table>

## APPENDICES

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Glossary of Key Terms</td>
</tr>
<tr>
<td>B</td>
<td>Case Studies</td>
</tr>
<tr>
<td>C</td>
<td>Delivery Options – Advantages and Disadvantages</td>
</tr>
<tr>
<td>D</td>
<td>Organisational Structures</td>
</tr>
<tr>
<td>E</td>
<td>Example Leisure Management Options</td>
</tr>
<tr>
<td></td>
<td>Appraisal Project Brief Contents</td>
</tr>
</tbody>
</table>
The Government’s Active Nation Strategy sets out a compelling vision for sport and physical activity focusing on its power to engage local communities and to change their lives for the better.

Access to good quality and affordable facilities is a key element in getting more people physically active. Sport England is working with a number of local partners to deliver an efficient, effective and sustainable facility network which can both increase participation and deliver on a range of outcomes such as increased education attainment and improved health and wellbeing.

Delivering this agenda is a challenge. Local partners need to strategically plan their provision so that the right facilities are delivered in the right places, and think carefully about how new facilities are designed, procured and managed so that they are affordable and deliver the right outcomes. Sport England has developed a comprehensive suite of best practice guidance, toolkits and resources to support local partners on this journey.

Selecting the most appropriate facility management model is a key decision for partners and we have received an increasing number of requests for assistance and guidance on this issue. This guidance document has been designed as an introduction to facility management options and aims to help partners adopt a strategic approach to decision making through focusing on a number of key issues and questions including:

- What are the needs of the local community and what resources are available?
- What priorities do partners have – are there any particular users/groups that they want to engage?
- What outcomes do partners want to achieve?
- What management options are available?
- What are the key features, advantages/disadvantages and legal implications of each option?
- Where have these options been implemented before and what were the outcomes?

The guidance is intended to be a ‘live document’ and will be updated regularly to reflect changes in regulations, market trends and best practice. Read in conjunction with Sport England’s Leisure Contract and Procurement guidance it provides a valuable resource for partners enabling them to make informed decisions about their management options and, if relevant, how to procure contracts in a timely and cost effective way. The documents complement the specialist advice available and will enable partners to provide greater clarity on the support they require ensuring that consultants are deployed as effectively as possible in the process.

This guidance has been developed by Sport England with support from FMG Consulting Ltd and Pinsent Masons LLP. We will endeavour to update the documents regularly and your feedback will enable us to do this. Please submit any feedback or queries to managementoptions@sportengland.org and we will endeavour to respond as soon as possible.

Charles Johnston
Director of Property
Sport England
01.
INTRODUCTION AND CONTEXT
1.1 Local authorities play a key role in helping their communities to regularly play sport and be physically active; they are also the biggest investors in community sport spending over £1bn every year. We understand that local authority partners invest in sport for the health, social and economic outcomes it can deliver. Sport England’s Strategy “Towards an Active Nation” aligns strongly with these local outcomes and will help deliver against five outcomes set out in the Government’s Sporting Future Strategy: physical wellbeing, mental wellbeing, social and community development, and economic development.

1.2 In recognition of local authorities’ important role Sport England has developed the Partnering Local Government web resource which can be found under https://www.sportengland.org/our-work/partnering-local-government/ to support local authorities to develop sport and physical activity in their area and achieve the wider impact being active brings.

1.3 Partnering Local Government encourages local authorities to position sport and physical activity as a key contributor to a local area’s strategic priorities and demonstrate sport as a sound investment. It provides advice on how to answer four key questions which local authorities have told us are key challenges for them:

<table>
<thead>
<tr>
<th>Why invest in sport?</th>
<th>Advice on how to demonstrate sport’s value to reduce health inequalities, act as a spur to economic growth, and a catalyst to engage communities. Demonstrating this is crucial to enable local authorities to make the case for investment in community sport, particularly at a time of increasing budgetary pressures.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How do I strategically plan and commission investment?</td>
<td>Advice on how to assess local needs, develop an outcomes-based vision and strategy for sport in the local area and identify who the best partners are to help deliver this.</td>
</tr>
<tr>
<td>How do I maximise efficiency?</td>
<td>To maximise efficiency, local authorities should measure, benchmark and assess their performance to ensure that current practice and performance is continually being challenged and improved.</td>
</tr>
<tr>
<td>How do I create impact?</td>
<td>Achieving impact requires strong leadership with a clear vision for sport and effective management of resources to get more people active resulting in reduced health inequalities, more engaged communities and economic growth. Working in partnership with key local stakeholders is critical to creating and sustaining impact.</td>
</tr>
</tbody>
</table>

1.4 Commissioning the most appropriate partners to help deliver a local authority’s vision and outcomes for its service is key. As part of this, local authorities are increasingly looking to review the operation of their leisure facilities or use alternative management models to ensure the most effective and efficient approach is in place to meet the outcomes the service is seeking to deliver.

1.5 In order to make an informed decision about fundamental changes to the way services are delivered, it is essential that a leisure management options appraisal is undertaken. To assist local authorities with this key decision, we have developed this easy to use guide to the most common leisure management options utilised in the industry.

THE BENEFITS OF UNDERTAKING A LEISURE MANAGEMENT OPTIONS APPRAISAL

- It requires the local authority to consider and clearly articulate the desired outcomes for the service, based on a detailed understanding of community need and the local authority’s wider outcomes;
- It provides an objective, transparent and rigorous assessment that can stand up to scrutiny and challenge;
- It provides an understanding of the risks associated with different operating models;
- It enables an informed decision to be made on the best value solution to meet the individual needs of a particular local authority area.
1.6 This guide has been compiled to inform local authorities of the options and their key characteristics, including typical advantages and disadvantages of each approach. It is intended as a starting point and is not a step by step guide on how to undertake a leisure management options appraisal.

1.7 The key characteristics, advantages and disadvantages, and legal and financial implications of each option will need to be explored in more detail and applied to specific local circumstances through the options appraisal before taking a decision on the most appropriate leisure management model for any local authority area.

1.8 An options appraisal of different leisure management vehicles needs to be carried out in the context of the wider priorities a local authority has and its overall approach to commissioning services. The concept of commissioning is explained in more detail in Section 2 but essentially is about ensuring community needs are identified and are at the centre of the approach, priorities are set within the available resource and the most effective and efficient delivery mechanisms are selected to deliver the required outcomes.

1.9 A local authority should not be considering its management options before it has defined its strategy, vision and required outcomes from the service. Once these have been defined, the most appropriate delivery model can be more accurately identified. A number of leisure management options are available in the market and the most common ones are covered in Section 3 of this guidance document.

1.10 Finally, the guide sets out a ‘pre-decision’ checklist that local authorities should consider before taking a decision on the future approach for delivering their sport and physical activity service. It is intended as both an aide memoire and ‘check and challenge’ list to ensure that local authorities have:
- Correctly followed the necessary steps;
- Considered and addressed all the relevant issues;
- Identified a clear strategy for what they want to achieve, how it will be delivered and by what types of partners.

1.11 Upon completion of this process, the local authority should be in the best possible position to ensure that it has selected the delivery vehicle which is best placed to deliver on all of the authority’s strategic outcomes for the service.

1.12 A glossary of terms used in this document is included at Appendix A.
02. COMMISSIONING FOR OUTCOMES
2.1 Local authorities are now more commonly “commissioners” of services than “deliverers”. The key current areas for commissioning are health and well-being, adult social care and services for children and young people. Those responsible for commissioning the sport and physical activity service will want to consider the requirements of these other commissioners and how they may inform the positioning and future shape of the sport and physical activity service provided.

2.2 Commissioning is the strategic process of identifying need and allocating available resources to best meet the need, through the most effective and efficient supplier of services in a way that achieves the required outcomes. It is not the same as procurement, which is the process of securing or buying services; nor the same as contracting, which is the means by which that process is made legally binding.

2.3 The aim is to ensure that local authorities follow an iterative process of understanding need, strategic planning, and delivering and monitoring of services to ensure local outcomes are being met – with the needs of service users and communities at the centre of the process. This is summarised in the diagram below.

2.4 Local authority sport and physical activity services can apply this commissioning approach to the development of the service. It will help establish how the service contributes to the local authority’s wider outcomes for the area (e.g. improving health and wellbeing, delivering better outcomes for older people, improving young people’s life chances), and define what the community needs are and who the priority audiences for the service are.

2.5 Applying a commissioning approach will encourage and require the commissioners of the service to address the difficult but essential question of “who is our service for?”. 
2.6 Local authorities have finite levels of resource, and being clear how these resources are focused to achieve the best possible outcomes for the area is key. Strategically planning how it wants to deploy its resources against different audiences’ needs will help a local authority consider the priorities and the implications for how the service is designed and delivered.

2.7 By way of example, the diagram above provides a framework, often used by commissioners of health and social care, for thinking about community needs in relation to personal, targeted and universal services.

2.8 In this example the needs of the general population can be provided for by the universal service available to all users. Those audiences with more specific and greater need in the middle and at the top of the triangle are likely to require different service interventions that have the potential to make a significant impact on improving outcomes for the individual and the wider community.

2.9 From a sustainability perspective, local authorities will want to consider how any direct subsidy is focused, for example at the ‘personal’ and ‘targeted’ audiences, with the ideal scenario being that financial surpluses from a universal offer are used to support the specific interventions.

2.10 Each local authority’s priorities are likely to be different. Considering where the local authority’s priorities are positioned on the decision triangle below will have a major impact on the most appropriate leisure management option(s).

2.11 Each local authority should consider where it wants to position itself and identify where its priorities sit within the spectrum of ‘customer service’, ‘commercial performance’ and ‘community engagement’. The local authority’s targeted position within the triangle will help inform the decision criteria that should be utilised through the options appraisal process to identify the most suitable management option(s).

2.12 Once the local authority has developed an understanding of the wider outcomes for the area, the needs of the community, the priority audiences and decision criteria for the service, it will be in a stronger position to consider the types of delivery options that will be best place to achieve its desired outcomes.

2.13 This guidance document provides an overview of the potential delivery options available – the key features, advantages and disadvantages, implications and risks associated with each option.

2.14 Following a robust leisure management options appraisal process, the local authority will be in a position to select delivery partners. This is likely to involve working with a range of partner organisations across the public, voluntary, private and third sectors. It may also involve a procurement process to identify the partners who are best placed to help deliver outcomes the service is seeking to achieve.
2.15 In order to maximise the benefits derived from the service and its facilities, it is essential that a concise list of local outcomes are agreed, which can then be translated into specific, measurable targets.

2.16 The Government’s strategy “Sporting Future: A New Strategy for an Active Nation”, December 2015, recognises the importance of local health and social outcomes and defines why the Government will invest in sport and physical activity in the future. The following five key outcomes have been identified by the Government as the drivers for its investment in community sport and physical activity. Sport England’s Strategy ‘Towards an Active Nation’ is designed to help deliver these outcomes with a particular focus on tackling inactivity and taking a customer centric approach:
- Physical wellbeing;
- Mental wellbeing;
- Individual development;
- Social and community development;
- Economic development.

2.17 Within these overarching key outcomes each local authority is likely to have different priorities. Outcomes for local areas will vary according to local needs and priorities. They could include, for example, some or all of the following areas:
- Improving health and wellbeing and reducing health inequalities;
- Providing local economic benefit;
- Ensuring local people have the skills to prosper;
- Supporting safe and inclusive neighbourhoods;
- Promoting community cohesion;
- Educating, protecting and providing opportunities for young people;
- Supporting and caring for vulnerable adults and older people;
- Providing high quality services;
- Sustainability/ environmental improvements.

2.18 Continually monitoring delivery to ensure that the desired impacts are being achieved is key. This should be an iterative process as information gathered at this stage will influence the local authority’s future strategic planning.

2.19 Gaining political support through Member involvement in all stages of the commissioning process is important, particularly when formulating the authority’s vision and strategy and identifying its decision criteria.
02. COMMISSIONING FOR OUTCOMES

SUMMARY

2.20 This section of the guidance has provided an overview of the commissioning process and how it helps to:
• Understand the wider outcomes for the area;
• Understand local needs of service users and the wider community;
• Identify priorities for the service – being clear who the service is for and what this means for resource allocation;
• Identify the most appropriate delivery vehicle that will maximise efficiency and impact on an on-going basis.

2.21 This section has also set out the process that local authorities can undertake when considering the future direction for their service, explains where in the overall process that consideration of management options sits, and identifies the planning that needs to be carried out first before a formal options appraisal commences.

2.22 There are a range of documents available regarding strategic commissioning to help the sport and physical activity sector better understand how the sector can engage with key local commissioners:
• Meeting the needs of Commissioners: a resource for sport and physical activity professionals
• Understanding commissioning: a practical guide for the culture and sport sector -
• Engaging in commissioning – A practical resource pack for the culture and sport sector -

It is acknowledged that the commissioning of outcomes and the delivery of a local authority’s strategic vision are, and indeed must be, focused wider than purely facility provision. However, the purpose of this document is to focus on the management of local government leisure facilities due to the crucial role they play in providing a base for delivering an authority’s strategic outcomes. The next section explains the available management options in more detail and signposts the reader onto additional information sources that can help to inform the options appraisal process. It is important to highlight that the options appraisal process may not necessarily lead to a change in the delivery model; even so, the process should still be followed to ensure that an objective assessment has been carried out and that the model which is chosen or retained is that which is best placed to deliver on the local authority’s target outcomes in the future.
03. MANAGEMENT OPTIONS OVERVIEW
03. MANAGEMENT OPTIONS OVERVIEW

INTRODUCTION

3.1 There are several different delivery options available for local authorities to consider in relation to the management of their leisure facilities. It may be that one model covers all the leisure facilities provided by a local authority or that specific models will suit some facilities but not others.

3.2 The leisure facility management options covered in this guidance are as follows, with case studies for each option included in Appendix B:

MOST COMMON LEISURE MANAGEMENT OPTIONS

- In-house management;
- Outsourced management;
- Establishing a new Organisation:
  - NPDO, Co-operative and CIO;
  - Community Interest Company;
  - Local Authority Controlled Company;
  - Joint Venture Company.
- Asset transfer:
  - Community Asset Transfer;
  - Long-term leases with restrictions;
  - Long-term leases without restrictions/asset disposal.

3.3 Some of the key drivers for local authorities when considering leisure management options appraisals are set out overleaf.
03. MANAGEMENT OPTIONS OVERVIEW

3.4 Each local authority should identify, understand and prioritise its key drivers when undertaking a leisure management options appraisal as this will inform the eventual solution. Gaining political buy-in to the key drivers from Members is vital if the process is to be successful.

3.5 This section provides a description of each option and their key characteristics. It also sets out some headline legal implications to be considered. It is intended as a starting point for consideration of the management options only, it is not a full options appraisal.

3.6 The key characteristics, advantages and disadvantages (see Appendix C), legal, human resource and financial implications will need to be explored in more detail and applied to specific local circumstances as part of a formal options appraisal before taking a decision on the most appropriate leisure management delivery model in each local authority area.
03. MANAGEMENT OPTIONS OVERVIEW

IN-HOUSE MANAGEMENT

3.7 This option is familiar to many local authorities and is often the default starting position for local authorities considering the future management options for their leisure facilities. It involves the retention (or in some cases the transfer back to in-house management after a previous outsourcing) of the local authority's leisure facilities, potentially with a focus on operational efficiencies and improvements in order to generate financial savings and enhance performance.

3.8 Although this model will be very familiar to most local authorities, we have set out the key features to allow proper comparison with the alternative options. The key characteristics of in-house management by the local authority are as follows:
- The local authority has direct responsibility for the management and operation of the facilities and services;
- Any staff employed in the operation of the facilities are employed by the local authority;
- The local authority gathers all income generated by the facilities;
- The local authority is responsible for all expenditure incurred in the delivery of the services;
- The services use the central support services of the local authority;
- The operating risks of the services remain with the local authority;
- The maintenance of the assets remains with the local authority;
- There are no set-up costs associated with this option and no timescale issues (assuming the service is not being brought back in-house after a previous outsourcing).

3.9 In summary, under this option the local authority will retain all income and expenditure and control over the service. Improvements under this option can still be delivered via self-financing investment options, potential rationalisation of facilities or improvements in relation to income generation and control of expenditure identified through an operational review. However, this solution will not benefit from structural fiscal advantages (see text box) or address risk transfer issues and may not protect the service from likely cuts that will face local government over the coming years.

3.10 A case study for in-house management is included in Appendix B. This focusses on Hartlepool Borough Council which undertook an options appraisal, decided to remain in-house and has delivered savings and improvements without changing its management model.

CHANGES TO VAT EXEMPTIONS ON SPORTING SERVICES

The supply of sporting services is currently exempt from VAT if those services are provided by an eligible body (essentially a non-profit making body that is not subject to commercial influence). The UK makes a distinction between non-profit making bodies (e.g. a charity) and those governed by public law (e.g. a local authority). In July 2017 the London Borough of Ealing won a case against HMRC at the European Court of Justice claiming that its supplies of sporting services should also be exempt from VAT. The court found that HMRC’s differentiation between non-profit making bodies and public bodies is not compliant with EU VAT law. This should mean that in future, local authorities’ supply of sporting services (e.g. gym membership income) is also exempt from VAT and that local authorities delivering via an in-house management team will have overpaid previous output VAT. The potential impact of this is that there will no longer be a net income benefit simply from different VAT treatment associated with a move from in-house management to externalised management, although this may also impact on the ability of local authorities to recover VAT on their expenditure and the implications for capital expenditure will need to be carefully considered in the wider context of the local authority’s VAT position. This guidance document will be updated as and when the UK implementation of the ruling and the impact of it is confirmed.
03. MANAGEMENT OPTIONS OVERVIEW

OUTSOURCED MANAGEMENT

3.11 If the local authority was to outsource the management of the service(s) through a procurement process, they are likely to contract with either:

- A ‘Hybrid’ NPDO management model which is a legal vehicle with charitable objectives. It can access discretionary National Non Domestic Rates (NNDR) benefits and may access Value Added Tax (VAT) benefits from the sporting exemption. It is not a charitable company or industrial provident society and not recognised by the Charity Commission;
- A charitable NPDO model which can attract both mandatory rate relief and VAT benefits with regard to the sporting exemption on large proportions of their income.

3.12 Further details of these organisations are set out below.

Outsourcing Using Hybrid Trusts

3.13 Following the introduction of Compulsory Competitive Tendering (CCT) to sport and leisure services in 1989, a number of private sector companies were set up to respond to the opportunities of CCT in operating and managing public leisure facilities. Since then, a number of companies have emerged to operate in the public sector sport and leisure market, managing facilities and services on behalf of local authorities under contract.

3.14 Most of the established leisure management operators offered a ‘Hybrid’ NPDO management model. This model is a legal vehicle with charitable objectives, which can access discretionary NNDR benefits, but is not a charitable company or provident society and not recognised by the Charity Commission.

3.15 Some of these operators also now offer charitable NPDO models, which can attract both mandatory rate relief and VAT benefits with regard to the sporting exemption on large proportions of their income. This means that they are competing on a ‘level playing field’ in terms of fiscal benefits with the other charitable trusts in the market that are bidding for leisure management contracts (see below).

Outsourcing Using an Existing Charitable NPDO

3.16 There are many existing charitable leisure trusts that have been set up by local authorities and, once established, have started bidding for new contracts in other local authority areas. Many of these organisations also operate cultural facilities such as community halls and theatres and some were specifically set-up to offer a full range of leisure, cultural and green space services.

3.17 This option to use an existing charitable NPDO provides the benefit of sharing risks across other leisure contracts that the NPDO holds and their associated economies of scale (similar to the private management option but often on a smaller scale).

3.18 The existing charitable NPDO is able to achieve VAT and NNDR savings. The ability for existing charitable NPDOs to generate significant capital funding, without a track record, is sometimes more limited and therefore capital funding from local authorities (for example prudential borrowing) is likely (and normally cheaper to finance) if major capital investment is required. It should be noted that the use of prudential borrowing for funding major works is commonplace now.

3.19 The ability to access external funding grants is often cited as an advantage of the NPDO model (especially if it is registered as a charity). There may also be an opportunity for greater staff involvement in the management of the services under an existing charitable NPDO (see Co-operative or Community Benefit Societies option referred to later in this section) which may allow for staff to be shareholders or members in the organisation compared to the private sector organisation.

3.20 Case studies in relation to outsourced management are included in Appendix B including Hinckley and Bosworth Borough Council, Central Bedfordshire Council and Redcar and Cleveland Borough Council, all of whom have developed successful partnerships with existing leisure operators.
3.21 NNDR (business rate) relief can be accessed by the Hybrid Trust option and Charitable NPDO options with the hybrid receiving only discretionary rate relief (set by local authorities) and the charitable vehicle 80% mandatory relief (set by the government).

3.22 However, it should be noted that under the Business Rates Retention Scheme which was introduced in April 2013, the financial benefit from NNDR savings is likely to be less of an advantage to local authorities who were previously in-house as it is likely that they will only benefit from a maximum of 50% of any new reliefs awarded due to the funding split of local and national funding of reliefs to the NNDR Collection Fund.

3.23 The Business Retention Scheme is likely to be reviewed in 2020 and may change the funding of the NNDR Collection Fund or the amounts retained by local authorities.

Key Characteristics of Outsourced Management

3.24 The key characteristics of the outsourced management approach are as follows:

- The local authority would be the “client” and would manage operations under a contract agreed by both parties which would normally include a specification and performance measurement system;
- The management opportunity would typically be defined by a number of key heads of terms, including:
  - A fixed contract term (typically ten to fifteen years);
  - A management fee payable by the local authority to the operator incorporating excess surplus share arrangements (there can potentially be a positive management fee from the operator to the local authority depending on the facilities within the contract, their condition, the location, catchment area, commercial terms of the contract etc.);
  - A Services Specification setting out the Local Authority’s requirements in respect of the delivery of the management services (typically including aspects such as pricing, programming, customer care, cleaning, opening hours, maintenance and quality management etc.).
- The operator undertakes management of the facilities, gathering all income generated by the facilities and being responsible for the majority of costs incurred by the facilities;
- Typically, the local authority would retain some responsibilities and risks (usually in respect of structural repairs and maintenance and utilities tariff increases) and incur costs in respect of these responsibilities. These risks can be transferred depending on the age and quality of the facilities but this typically comes at a risk price premium;
- Staff are employed by the outsourced management via a transfer under the TUPE regulations;
- The majority of operating risks of the services are transferred to the outsourced management, although they would incorporate their own profit (risk) margin within the management fee agreed with the local authority and achieve this profit margin by delivering the projected financial performance;
- The local authority would monitor the operational performance and service standards delivered by the operator, such that any failures to perform may be subject to financial deductions;
- The outsourced management will use their own central support costs and will not need to use those of the local authority, which potentially has an impact on the central resources of the local authority.

3.25 From a local authority’s perspective, there is limited difference between the private management organisation (utilising a NPDO structure) and existing charitable NPDO options as they are both procured through a competitive tendering process. The ultimate contractual terms and conditions are likely to be very similar no matter the structure employed by the successful bidder.

3.26 Under both forms of outsourced management, there is perhaps greater protection from local government funding cuts (particularly for loss-making facilities being cross-subsidised by more profitable facilities within a portfolio) than under an in-house model. The facilities are contracted as a package for the operator to manage throughout the life of the contract and it is more difficult to make changes to the contract terms to close facilities mid-contract.
3.27 The third overarching option for the local authority is for it to establish a new organisation to run the facilities and services. There are a number of forms which the organisation could take. The most commonly used structures that are appropriate include the following:

- Unincorporated Charitable NPDO;
- Co-operative or Community Benefit Society;
- Company Limited by Guarantee (GLG);
- Charitable Incorporated Organisation (CIO);
- Community Interest Company (CIC);
- Local Authority Controlled Companies (LACC);
- Joint Venture company.

**Charitable Status**

3.28 As well as identifying the appropriate option for the type of organisation it will be necessary to decide if charitable status is desirable and, if so, if it is available. There can be advantages to being a charity as discussed below but there are also some disadvantages mainly due to the additional legal requirements.

3.29 A key point is that a charity must be independent so cannot be controlled by a local authority except indirectly through lease and contract terms. An organisation must meet certain tests to be a charity and while this is usually possible for a sport or leisure activity this would need to be checked for the specific activities or services. Further information is set out in Appendix D.

3.30 Connected to the choice of the form of the organisation is whether it is to be a charity. The table below sets out whether these forms of organisation can be a charity or not.
03. MANAGEMENT OPTIONS OVERVIEW

Figure 3.2 – Forms of Organisation and Their Status

<table>
<thead>
<tr>
<th>Social Enterprise</th>
<th>Not for Profit Distributing Organisation</th>
<th>Charitable</th>
<th>Not Charitable</th>
</tr>
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<tbody>
<tr>
<td>Unincorporated NPDO</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Co-operative or Community Benefit Society</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Public Service Mutual</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Company Limited by Guarantee (CLG)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Charitable Incorporated Organisation (CIO)</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Community Interest Company (CIC)</td>
<td>✓</td>
<td>✓*</td>
<td>✗</td>
</tr>
<tr>
<td>Local Authority Controlled Company</td>
<td>Optional**</td>
<td>Optional**</td>
<td>✗</td>
</tr>
</tbody>
</table>

* It is possible to distribute profit under a CIC. Limitations applied to dividend and interest payments made to shareholders and financiers ensure a profit can be made, but the primary focus remains on achieving benefit for the community.

** Depends upon the nature of the company’s business objectives.

Overview of Non Profit Distributing Organisations

3.31 A NPDO is an organisation that is not able to distribute profits or surpluses to a third party, for example shareholders, but must use these profits or surpluses to reinvest in the organisation’s objectives to improve services.

3.32 The key characteristics of the operation of services by a new NPDO are as follows:
• The local authority will enter into a contract and specification for the management and operation of the service/facilities;
• The assets, as per other options, will be transferred under a lease to the new NPDO;
• In return for the services and management of the existing facilities, it will receive an agreed fee from (or pay an agreed fee to) the local authority, probably in the form of an annual grant or a management fee;
• The operating risks of the services would theoretically transfer to the new NPDO. However, it is important that the new NPDO has the financial resources to absorb unforeseen operational fluctuations;
• The new NPDO may be a charity to take advantage of the fiscal benefits attached to charities including VAT and NNDR relief;
• The NPDO will often initially have limited opportunity to raise capital finance, as it may have limited security and no trading history so necessitating careful consideration of business planning and budgeting;
• A new NPDO will be likely to include many of the existing management team but may attract or require other senior officers to the team (e.g. finance, HR or legal expertise).

3.33 The cost of setting up a new NPDO can vary significantly depending on the level of in-house resource available to support the process. If detailed condition surveys of the assets are required prior to transfer, this will increase the cost.

3.34 Over recent years the market has seen substantial growth in the use of these organisations to operate leisure facilities for local authorities. There are a number of NPDO structures available to operate and manage leisure facilities and services as set out above.

Organisational Structures

3.35 An introduction to these organisational structures is set out below. Further details of these can be found in Appendix D.
Unincorporated Charitable NPDO

3.36 Under an unincorporated NPDO the trustees have personal liability i.e. they are liable for any liability that accrues to the NPDO. This option is therefore generally not seen as being appropriate for the management and operation of sport and physical activity services due to the potential liabilities that may occur. It may be possible however to obtain insurance provisions to mitigate these risks.

Co-operative or Community Benefit Society

3.37 These are now governed by the Co-operative and Community Benefit Act 2014 but were previously known as Industrial and Provident Societies (IPS). A registered society is an organisation which has registered after the 1st August 2014 under the Act or was, immediately before this date, registered as a company under the Industrial and Provident Societies Act 1965. An IPS is run either as a co-operative or for the benefit of the community.

3.38 There are a number of examples of IPS in the leisure sector such as Greenwich Leisure Ltd (GLL), Pendle Leisure Ltd and Salford Community Leisure Trust.

Public Service Mutual

3.39 There are many forms of mutual, including major employee-owned businesses like John Lewis or building societies such as Nationwide which are fully or majority owned by their employees (known as members). This term is generally used for an organisation that has left the public sector but continues delivering public services. Employee control plays a significant role in their operation. A mutual can also be a co-operative or social enterprise.

3.40 A mutual is not a legal form in itself, as being a mutual is about employee control and how an organisation is managed. However, the Public Contracts Regulations 2015 state that a Public Service Mutual can now only operate for a maximum period of three years before a service is required to be tendered in the open market.

Company Limited by Guarantee

3.41 A company limited by guarantee (CLG) is an alternative type of corporation used primarily for non-profit organisations that require a legal personality. A company limited by guarantee does not usually have any share capital or shareholders, but instead has members who act as guarantors.

3.42 Many of the leisure trusts in England are incorporated using Company Limited by Guarantee. One of the largest companies in the UK that is a CLG is BUPA, the health provider. Examples of CLG in leisure include Peterborough Vivacity, Rochdale Link4Life, Freedom Leisure, Wave Leisure plus many more.

Charitable Incorporated Organisation

3.43 A Charitable Incorporated Organisation (CIO) is a form of legal entity designed for non-profit organisations. The main intended benefits of the new entity are that it has its own legal entity, the ability to conduct business in its own name, and limited liability so that its members and trustees will not have to contribute in the event of financial loss.

3.44 Although charities can be formed as companies, they must be registered with both Companies House and the Charity Commission, however, a CIO only needs to register with the Charity Commission. Examples of the use of the CIO structure in leisure are mainly in Scotland including Leisure and Culture Dundee and East Ayrshire Leisure Trust. Further details of CIOs are set out in Appendix D.
Community Interest Company (CIC)

3.45 A Community Interest Company (CIC) was introduced in 2005 under the Companies (Audit, Investigations and Community Enterprise) Act 2004. It is designed for social enterprises that want to use their profits and assets for the public good. This form of legal structure is intended to be easy to set up, with all the flexibility and certainty of the standard company form, but with some special features to ensure they are working for the benefit of the community. Examples include Warrington Live Wire, Cheshire West and Chester and Trafford Leisure. Further details regarding CICs are included in Appendix D.

Local Authority Controlled Company

3.46 An alternative structure that is becoming increasingly popular for local authorities is the Local Authority Controlled Company (“LACC”). Local authorities may, subject to certain statutory limitations, establish a company and undertake socio-economic and/or commercial activities. The setting up of a LACC is outside the 2015 Regulations as it has an exemption subject to a number of tests that must be met.

3.47 Recent examples of setting up LACCs include Dorset, Bournemouth and Poole which set up a company providing social care; Bristol has created separate entities to operate and manage waste collection, energy and technology services; other authorities have also set up property management and development companies and recent examples of LACCs used in leisure include Newark & Sherwood District Council and Broxtowe Borough Council. Further details are set out in Appendix D.

Joint Venture Company

3.48 A Joint Venture in this context is when a local authority and an external partner enter into an agreement to develop a new entity to (develop and) manage the facilities (for a limited period of time). The joint venture vehicle must be set up as a defined legal entity which can take several structures including companies limited by shares, companies limited by guarantee, industrial and provident societies and many others.

3.49 Each party must be clear on the intended length of term of the joint venture, its goals and objectives, how the parties will achieve a return on investment and how they will protect their investment if another party wishes to exit or fails to perform their obligations. Normally, all parties share the risks and rewards in line with their ownership of the joint venture.

3.50 Joint Ventures in this form are relatively new to the leisure industry but a case study for a newly established Joint Venture by Sunderland City Council is included in Appendix B.

Asset Transfer

3.51 An option that is increasingly being considered by local authorities in response to continued reductions in budget levels is the asset transfer. The difference being that there may not be a connected service agreement or funding arrangement. There are a number of different asset transfers and set out below are the main ones used in the sector:
- Community Asset Transfer;
- Long term leases with restrictions;
- Long term leases without restrictions.

Overview

3.52 Community Asset Transfers (CAT) involves a shift in the long-term management and/or ownership of land or buildings from local authorities to groups and organisations such as social enterprises, voluntary groups, sports clubs, national governing bodies etc. However, it could also be an asset transfer to another public body, such as a town or parish council or to a school (in the scenario of dual-use facilities particularly).
In response to diminishing budgets in recent years, some local authorities are also taking a more fundamental approach to asset transfers whereby sites are transferred via a long-term lease to external organisations. This is more likely to occur on an individual facility basis. The leases can either contain restrictive covenants so that the use of the land is reserved for sport and physical activity purposes or come without any restrictions and allow disposal of the site for a commercial value.

We have set out the potential approaches in more detail below. Case studies for different forms of asset transfers are included at Appendix B including the approaches taken by Mendip District Council, Swindon Borough Council and Newcastle City Council.

**Community Asset Transfer**

A community asset transfer could take the form of a freehold, a long lease, a shorter lease or a licence to occupy. However, for most transfers, where grants or loans are required for capital development, the length of tenure will need to be long enough to secure external investment. Therefore, asset transfer is usually taken to mean a long lease, often at least 25 years, or a freehold.

Local authorities are able to transfer their land and buildings to community sports organisations at ‘less than best consideration’, i.e. below market value. With regards to a freehold disposal, Local Government can dispose of its assets at less than best consideration under the General Disposal Consent (England) 2003, where the asset to be disposed of has an ‘undervalue’ of less than £2million.

The legislation also requires that, to meet the criteria set and so be lawful, the transfer should help to secure the promotion or improvement of the economic, social or environmental well-being of an area. Further information can be found at [http://www.communities.gov.uk/documents/planningandbuilding/pdf/462483.pdf](http://www.communities.gov.uk/documents/planningandbuilding/pdf/462483.pdf).

There is no requirement that local authorities undertake a tendering process within the General Disposal Consent. However, there is the general requirement for authorities to follow “normal and prudent commercial practices” which would suggest ensuring that there are objective steps taken to confirm the rationale for the transfer and that it represents the “best” way forward for the local authority. Where a local authority has established a robust and objective business case for transfer, there would be no further requirement to ‘market test’ a transfer proposal to meet the General Consent criteria.

When considering whether to make an asset transfer, local authorities should:
- Have regard to their corporate policy in determining whether this is an appropriate course of action to consider;
- Comply with “normal and prudent commercial practices” in identifying the rationale and terms of transfer, ideally supported by objective third party evidence - for example by obtaining the view of a professionally qualified valuer so that the likely amount of the undervalue can be assessed;
- Understand what community benefits will be realised by the transfer and note these;
- Identify how the interests of local people will be better served by this route rather than any other;
- Establish and test the business plan and financial viability of the community based organisation's plans;
- Assess the State Aid implications.

Opportunities to progress an asset transfer are best taken forward when:
- There is community appetite to do so;
- The community resource and support is sufficient for the future of the asset to be sustainable and to successfully meet the objectives of making the transfer;
- Public bodies seek to engage and involve communities in the design and delivery of services;
- Facilities and services are threatened with closure (without an alternative being contemplated);
- There is adequate time to develop a transfer proposal;
- The terms of a transaction between partners are mutually beneficial;
- The community resource and support is sufficient for the future of the asset to be sustainable and to successfully meet the objectives of making the transfer.
3.61 Some of the opportunities may be ‘demand-led’ through a community based organisation asking the local authority if it is willing to make a transfer; others may be in response to external factors or events e.g. a planning application for development or proposals for the closure of sports facilities owned and managed by the local authority.

3.62 It is crucial that, for an asset transfer to be successful into the future, it must be sustainable – this requires both the local authority and the organisation to work together. The local authority must continue to support the community group to achieve the targets agreed at the time of the community asset transfer and not purely look at is as a way of offloading a liability.

3.63 The community group must have undertaken a robust feasibility study before entering into an asset transfer and must have a strong and sustainable business plan in place, considering all capital, revenue and cash flow implications.

3.64 Case studies and a detailed toolkit for carrying out a Community Asset Transfer are available from the toolkit on Sport England's website at http://www.sportengland.org/facilities-planning/tools-guidance/asset-transfer/.

3.65 The toolkit sets out step by step guidance to understanding and undertaking a community asset transfer, including advice on feasibility studies, business planning, establishing a new organisation, governance, accounting, property and legal matters and on-going premises management.

3.66 Further guidance on the transfer of public leisure facilities to volunteer delivery through asset transfers is available from the Chartered Institute for the Management of Sport and Physical Activity (CIMSPA) at https://www.cimspa.co.uk/page.php?id=71.

**Commercial Asset Transfer – Long-Term Lease**

3.67 The text above focused on community asset transfers although different forms of more commercial asset transfers are increasingly being considered in relation to local authority leisure facilities. This could take the form of a property transaction whereby the local authority advertises opportunities to take over facilities under a long-term lease (25 years plus).

3.68 In exchange for taking a long-term lease of the facilities, the operator may be asked to provide a rental return to the local authority. This may sound like an ideal scenario for a local authority but in order for the operator to be able to make the facilities commercially viable they may require a number of conditions, such as:

- The freedoms to determine the facilities it provides and the pricing and programming to enable it to maximise the commercial opportunity that the facilities will provide;
- The local authority to address any defects in the facilities before the asset transfer;
- Upfront investment from the local authority to enhance the assets, potentially in partnership with investment from the operator;
- The local authority to retain the risk in relation to any pensions deficit associated with transferring employees;
- A degree of freedom relating to future potential rationalisation of assets and/or the ability to develop some sites/elements of sites for commercial uses (noting this can often be in addition to maintaining/enhancing existing uses).

3.69 This is not an exhaustive list of conditions but is intended to provide examples to illustrate that an operator is unlikely to enter into a commercial asset transfer with a local authority for a long-term lease of ageing leisure facilities if the authority is unwilling to consider investing some capital, retaining some risks and allowing for potential commercialisation of the site(s).

3.70 Under this option, whilst it may be considered a property transaction in relation to procurement legislation, a tendering process may still be preferred in order to maximise interest, demonstrate best value and encourage market innovation.

3.71 The benefits of this approach for a local authority are primarily related to reducing the revenue costs of its leisure facilities and securing investment into its assets. This needs to be weighed up against the disadvantages of losing control of the assets (beyond any limited service stipulations included in the lease). The lease would stipulate the permitted uses for the asset but the local authority would not have the level of control over pricing, programming etc. that it normally achieves through a traditional Services Specification and Contract.
03. MANAGEMENT OPTIONS OVERVIEW

3.72 Political and reputational risk for the local authority is often seen as a key concern as this option can be viewed as a ‘sell-off’ of facilities, although it needs to be made clear that this asset disposal option is different from a total disposal or ‘trade sale’ option (as covered later) as it is achieved via a lease with restrictions rather than a sale of the freehold of the site.

Commercial Asset Transfer – Disposal of Leisure Assets

3.73 A commercial asset transfer in this context is the disposal of the leisure assets and thereby local authority leisure provision to a third party to do with as they see fit. These would typically be achieved through long-term leases (e.g. 99 years plus) or sale of the freehold of the site.

3.74 Interested parties may include private leisure companies who may be looking for leisure premises in an area, private equity companies, investors and businesses who would take an interest in the acquisition of these sites to provide sport and physical activity services, alternative or complementary services (e.g. sports retailer, café, restaurants etc.) or the acquisition of the land for other commercial uses or development.

3.75 The key characteristics of this option are as follows:
• The local authority may receive a capital receipt from the disposal of the asset(s);
• The sale could be a freehold sale or a long leasehold (for example 99-125 years);
• Staff may transfer under TUPE to the new owner, subject of course to the continuity of sport and physical activity services, but legal advice should be sought;
• All operating and asset risks would be transferred away from the local authority to the third party;
• The value of the purchase would reflect the potential income stream to be generated from the facilities, any covenants on the land and the future land value that may be achieved in current or alternative uses.

3.76 It should be noted that it is very unlikely that a commercial health and fitness operator would be interested in acquiring more than one or two of a local authority’s leisure facilities. This is because the major commercial health and fitness operators require a significant catchment population that normally only large towns and cities can provide.

3.77 Further to this, it is unlikely that any form of public pay and play and concessionary pricing schemes will continue, given the need to generate a return on investment, although this would be subject to negotiation with the private operator. This will likely result in exclusion of a number of target groups due to their inability to pay commercial rates.

3.78 It could also, in the extreme, result in the total removal of sport and leisure facilities if sites are redeveloped e.g. for housing or commercial premises. However, on the flip side, the benefit could be improved enhanced facilities which are funded by the commercial development providing further benefit to an area.

COMPARISON OF OPTIONS – HEADLINE ADVANTAGES AND DISADVANTAGES

3.79 The table overleaf provides an indicative headline assessment of the relative advantages and disadvantages of each leisure management option, based on a traffic light RAG (Red, Amber, Green) rating system. Where an amber or red light is showing, it highlights the risk/disadvantage arising that a local authority can look to mitigate or improve through either identifying an alternative route or negotiating within the terms of any agreement.

3.80 It is not an exhaustive list but provides an indication of the typical strengths and weaknesses associated with the different options. The issues flagged should be considered in light of local circumstances and priorities when carrying out an options appraisal. More detailed explanations for the advantages and disadvantages of each option are set out in Appendix C.

3.81 It is acknowledged that advantages and disadvantages can be viewed differently from different perspectives. For the avoidance of doubt, this document is produced from a politically neutral perspective for an intended audience at local authority senior officer/Member level.
## 03. MANAGEMENT OPTIONS OVERVIEW

Table 3.3 - Comparison of Leisure Management Options – Headline Advantages and Disadvantages

<table>
<thead>
<tr>
<th>Key Feature</th>
<th>In-House</th>
<th>Outsourced</th>
<th>New NPDO</th>
<th>LACC</th>
<th>JV</th>
<th>CAT</th>
<th>Long-Lease</th>
<th>Asset Disposal</th>
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<td>Access to external funding</td>
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<td>Access to economies of scale</td>
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<td>Potential for community &amp; staff involvement</td>
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LEGAL CONSIDERATIONS

Procurement Regulations

3.82 One of the key issues around a local authority setting up its own NPDO or LACC or entering into a JV is whether the approach contravene the public procurement regulations and the value for money principles used by public bodies. In all cases, we would strongly recommend that specific legal advice is obtained on this, prior to confirming a way forward. We therefore set out below simply an overview of key considerations.

3.83 Procurement of works, supplies and services by the public sector is constrained by EU regulations which are implemented into UK legislation by way of regulations. The most recent regulations are the Public Contracts Regulations 2015 and Concession Contracts Regulations 2016 which set out the procurement requirements for different types of public sector contracts, and while these regulations may exclude certain types of contracts from their regime, there remain overriding considerations that need to be taken into account to ensure that the EU principles of transparency, equal treatment, non-discrimination and proportionality are at all times maintained.

3.84 The Regulations require certain contracts to be advertised in the Official Journal of the European Union (OJEU) and follow the procurement rules set out in the Regulations where the procuring entity is a ‘contracting authority’; the contract is a public works, services or supplies contract; and the estimated value of the contract is above the specified financial thresholds.

3.85 Certain social and other specific services, including recreational, cultural and sporting services (i.e. leisure contracts), which have an estimated value in excess of £589,148 are however subject to “light touch” regulation only. This means that the full procedural requirements under the Regulations do not apply.

3.86 When procuring above threshold light touch contracts, local authorities must:
   a. Publish a contract notice in the OJEU;
   b. Publish a contract award notice in the OJEU;
   c. Follow a procedure which ensures compliance with the EU Treaty principles of transparency, equal treatment and non-discrimination.

3.87 Light touch contracts which fall below the relevant financial threshold will not typically be subject to similar rules, on the basis that there is not likely to be “cross-border interest” in those contracts. This is unless there are concrete indications that such interest does exist. In any event, in view of local authorities’ requirement to achieve value for money, it would be advisable for below threshold contracts to be procured in accordance with the Treaty principles outlined above.

3.88 Regulation 77 also provides that procurement of certain contracts may be reserved to organisations that meet certain criteria (for example a Public Sector Mutual) where it is possible to run a procurement competition where participation is limited to qualifying organisations.

3.89 The above all assumes that the delivery option being implemented involves the procurement of a services contract through outsourcing with the private sector or an existing NPDO etc., however there is the alternative of a grant arrangement.
03. MANAGEMENT OPTIONS OVERVIEW

Grant and Lease Arrangements

3.90 Setting up a NPDO and paying a grant to the NPDO would not usually be deemed to be a services contract and as such would be outside the provisions of the Regulations. In such a scenario the local authority will be divesting itself of the facilities on a lease arrangement and will not be providing any services and therefore the provisions of the Regulations will not apply. This is a grey area but has been used alongside local authorities’ “well-being” powers to set up NPDOS to provide leisure and cultural services.

3.91 There are however drawbacks to this grant approach in respect of the VAT situation, as the one-off grant payment from the local authority would not include VAT. This could potentially mean that there is additional irrecoverable VAT for the NPDO, negatively impacting on its financial position. Specialist advice may be required when considering these options.

3.92 It should be noted however that there are examples where local authorities have entered into grant arrangements and HMRC has subsequently confirmed that the transaction can be treated as a payment for services and that VAT can be attracted and is therefore recoverable, irrespective of the fact that for procurement purposes this same contract has been structured as a grant and not a services contract.

3.93 Such arrangements must also comply with EU State Aid rules, which prohibit certain grants by public sector organisations.

Local Authority Controlled Company

3.94 Within the context of complying with EU procurement regulations, the “in-house” or Teckal exemption has been referred to by a number of authorities looking to provide services without opening them up to formal procurement.

3.95 The rules in this area are now set out in Regulation 12(1) of the Regulations, which provides that a contract awarded by a contracting authority to an entity which satisfies the following criteria does not require to be procured:

• The authority exercises over the entity a control which is similar to that which it exercises over its own departments;
• More than 80% of the activities of the entity are carried out for the controlling authority;
• There is no direct private participation in the controlled entity.

3.96 Therefore, for certain types of new delivery vehicle, this exemption could apply. However, in the case of charitable vehicles, where independence is necessary, it is unlikely that the exemption will apply.

Use of Leases

3.97 Under all options it is generally assumed that the local authority will grant a lease to the operator, such that they are in rateable occupation of the premises for NNDR purposes. The normal practice is that this lease is coterminous with the contract and is forfeited if the contract is terminated. Thus, the assets revert to the local authority on any termination of the Contract.

3.98 This approach protects the local authority in relation to getting back the land and buildings in the event of contract termination or business failure by the operator – for example, if the operator becomes insolvent, the contract is usually terminated and the assets revert to the local authority.
SUMMARY OF OPTIONS

3.99 There are a number of options highlighted in this section for the future management of a local authority’s leisure facilities and services, many of which could incorporate other local authority functions and services such as sports development, libraries, museums and theatres etc. The options are wide ranging and the ultimate decision will depend on assessment and evaluation of a local authority’s situation, priorities and requirements across a number of key issues such as those set out below.

- Level of revenue savings required and in what timescales;
- The balance between financial and non-financial objectives;
- The condition of the facility stock;
- Amount of capital available to invest;
- Level of capital investment sought from the delivery vehicle;
- Attitude to risk and the level of risk transfer being sought through the process (e.g. asset lifecycle risk, utilities tariff increase risk, pensions deficit risk etc.);
- The amount of control that the local authority wishes to retain (e.g. over facilities on offer, pricing, programming, branding etc.);
- The deliverability/viability of the authority’s strategic vision under each delivery vehicle;
- The wider outcomes that the management vehicle must deliver and the areas in which it must be ‘commissionable’;
- The extent to which local community involvement in the delivery vehicle is required;
- The flexibility required for future changes to be made to the service by the local authority in the short, medium and long-term.
3.100 Before taking a decision on its intended future leisure management vehicle, a local authority should evaluate each option against these (and potentially other) areas as part of an options appraisal/business case process. As a minimum, the leisure management options appraisal must contain an in-depth analysis of the following issues:
03. MANAGEMENT OPTIONS OVERVIEW

3.101 The process should involve input from key officers from the local authority including representation from sport/leisure (including sports development), finance, legal, human resources, assets and public health as a minimum. This should include input from the senior management team at Director level. Cross-party political support for the process should be sought from Members where possible. If cross-party political support is not possible, as a minimum Members should be appropriately consulted on the options and kept informed on progress and key findings throughout the process.

3.102 When considering an outsourcing, establishing market interest through soft market testing is also an important stage of the process and is encouraged under the 2015 Regulations. Any soft market testing carried out should be as part of a focussed process, setting out a clear understanding of the inputs and outcomes the local authority would be looking for from an operator. This will allow an operator to provide meaningful feedback that can be used to inform the options appraisal.

3.103 It should be remembered that any options appraisal of different leisure management vehicles should only be carried out in the context of its place within the overall commissioning cycle set out earlier in this document. Having the appropriate vision and strategy in place with clear required outcomes for the service in advance of carrying out an options appraisal is necessary to ensure that the option selected is the one best placed to deliver the strategy and achieve the desired outcomes.

3.104 An example brief for a leisure management options appraisal process is set out in Appendix E. Typically, at least 3 months should be allowed to carry out the process thoroughly. If a change in management vehicle is selected, implementation processes can take at least 12 – 18 months. On this basis, local authorities should be aware that options appraisals should be started circa two years in advance of any potential target date for commencing with a new management vehicle (if applicable).

3.105 This document only provides an overview of the options and highlights some of the relevant issues that local authorities should be considering. It does not cover the detailed implications of all of the above issues nor provide detailed advice. Every situation must be considered against the specific local circumstances. Local authorities are strongly advised to seek external expert support to carry out this specialist work where in-house expertise is unavailable or requires additional support.

3.106 Once all of this work is completed, a local authority will be in a position to proceed with the implementation of its selected delivery vehicle. The final section of this document sets out a ‘pre-decision’ checklist which highlights the steps that a local authority should have undertaken before confirming its decision on its future delivery model. Following this guidance will ensure that the future delivery model that is selected will be best placed to work towards and deliver the authority’s strategic goals.
04. PRE-DECISION CHECKLIST
INTRODUCTION

4.1 This section sets out a checklist for local authorities to complete before they confirm the decision on their future delivery model for their sport and physical activity service. Greater value for money and delivery of outcomes will be achieved if the authority has gained a full and clear understanding of how the service is performing now, what the local needs are, committed to a strategic vision to meet these needs, planned how it intends to deliver that vision and identified the outcomes it requires the chosen vehicle to be delivering in the future.

4.2 A local authority should be able to positively answer all of the questions below before finalising its decision on the future delivery model for the service. This is true under all options, whether a local authority is intending to keep the service in-house, enter into a partnership with a third party or set up a new organisation to deliver the service. If the local authority has not considered the below issues properly, it may not be taking a decision in full knowledge of all of the facts and implications and as a consequence increasing the risk of unforeseen consequences, potential liability or simply making the wrong decision.

4.3 The pre-decision checklist is structured against the stages of the commissioning cycle, grouped into three areas.

Table 4.1 – Pre-Decision Checklist

<table>
<thead>
<tr>
<th>CHECKLIST ITEM</th>
<th>Needs, Resources and Priorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Has the local authority gathered data on the current baseline position of its service, facilities and local population e.g. participation, public health, throughput, customer satisfaction, financial performance, obesity, anti-social behaviour etc.</td>
</tr>
<tr>
<td>2.</td>
<td>Does the local authority understand the contribution that sport, leisure and physical activity is currently making in the local area? Has it established its key target groups and identified areas for improvement?</td>
</tr>
<tr>
<td>3.</td>
<td>Has the local authority identified its position on the decision triangle in order to define its decision criteria? Has this prioritised approach been agreed with Members?</td>
</tr>
<tr>
<td>4.</td>
<td>Has cross-party political support been sought for the options appraisal process? Achievement of this is desirable but not always possible. As a minimum, have Members been appropriately informed/consulted with in relation to the process?</td>
</tr>
<tr>
<td>5.</td>
<td>Has the local authority analysed the local population (e.g. using Active People and market segmentation) and Health Data to understand what they need from a sport and leisure facility, outreach and activity programme perspective?</td>
</tr>
<tr>
<td>6.</td>
<td>Has the local authority considered and agreed the outcomes the service is seeking to achieve and where the service fits within the wider landscape for the area (e.g. in relation to physical activity and health &amp; wellbeing)?</td>
</tr>
<tr>
<td>7.</td>
<td>Has the local authority used the available Sport England tools (e.g. the Assessing Needs and Opportunities Guidance and the Playing Pitch Strategy Guidance) to identify what is needed from a facilities perspective and where?</td>
</tr>
<tr>
<td>8.</td>
<td>Has the local authority produced sport and physical activity and leisure facility strategies that set out a clear strategic vision for the activities and facilities that are required now and in the future?</td>
</tr>
</tbody>
</table>
## 04. PRE-DECISION CHECKLIST

### Table 4.1 – Pre-Decision Checklist continued

<table>
<thead>
<tr>
<th>Checklist Item</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Delivery Options and Procurement</strong></td>
<td></td>
</tr>
<tr>
<td>9. Does the local authority have an accurate understanding of the current condition of its facilities and future liabilities?</td>
<td></td>
</tr>
<tr>
<td>10. Does the local authority understand the current baseline financial, participation and throughput performance of its leisure facilities?</td>
<td></td>
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<tr>
<td>11. Has the strategy been costed from a capital and revenue implications basis and is it deliverable against projected future budget levels?</td>
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</tr>
<tr>
<td>12. Has the local authority identified the outcomes that it requires the delivery model to contribute towards the local authority’s overall strategic priorities and wider socio-economic outcomes?</td>
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<tr>
<td>13. Have key stakeholders and partners been given the opportunity to input into the process?</td>
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</tr>
<tr>
<td>14. Has the local authority entered into discussions with key commissioners (e.g. CCG, children’s services etc.) to identify areas in which the service can be “commissioned” to deliver wider outcomes (e.g. exercise on referral, weight management etc.)?</td>
<td></td>
</tr>
<tr>
<td>15. Has the local authority decided what facilities and services will be delivered by the operating vehicle? This will include core leisure assets but are there also wider opportunities, for instance, linked to libraries and cultural assets? Have opportunities for joined-up management, governance and co-location of services been investigated? Does the arrangement need to include flexibility for future asset rationalisation? Is sports development included or has the authority decided that, in order to effectively deliver its Sports Strategy and best contribute to the outcomes referred to in item 6 above, it needs to retain a dedicated, specialist sports development function in-house?</td>
<td></td>
</tr>
<tr>
<td>16. Have legislative implications been adequately considered with an audit trail in place, including the impact of the Localism Act (2011), the Public Services (Social Value) Act (2012) and the Equalities Act (2010)?</td>
<td></td>
</tr>
<tr>
<td>17. Has the options appraisal been carried out to identify the best model to enable the delivery of the strategic vision including consideration of investment requirements, capital and revenue costs, impact on local authority’s central support budgets, set-up costs, implementation timescales, risk analysis etc.?</td>
<td></td>
</tr>
<tr>
<td>18. If planning to partner with an external organisation, has soft market testing been used to test key issues and ensure sufficient market interest exists?</td>
<td></td>
</tr>
<tr>
<td><strong>Delivery, Monitoring and Review</strong></td>
<td></td>
</tr>
<tr>
<td>19. Has an appropriate implementation plan been established and resource identified to deliver the plan?</td>
<td></td>
</tr>
<tr>
<td>20. Has the local authority identified a plan for how it will measure and monitor the performance of the chosen delivery model against its required outcomes on an on-going basis?</td>
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</tr>
<tr>
<td>21. Does the local authority have a plan in place to continuously revisit its strategic goals and required outcomes in the future as local needs and priorities change?</td>
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</tr>
</tbody>
</table>

4.5 A local authority should not take a decision to proceed with any delivery model until it has adequately considered and addressed all of the above questions. Once it is in a position to answer ‘yes’ to these questions it will be time to move onto the implementation process. There are further resources available to support local authorities as they move into the implementation process (including toolkits for procurement and community asset transfers) at https://www.sportengland.org/our-work/local-work/partnering-local-government/.