

BABERGH DISTRICT COUNCIL

FROM: Project and Programme Executive

REPORT NUMBER **G56**

TO: Overview and Scrutiny Committee
(Community Services)

DATE OF MEETING: 24 July 2007

APPRAISAL OF MANAGEMENT OPTIONS FOR DUAL USE FACILITIES AND THE QUAY THEATRE SUDBURY

1. PURPOSE OF REPORT

1.1 Dual use sports facilities are located in Upper/High School sites and usage is a mixture of school (during the day) and the community (part day, evenings and weekends). There are five such sites in Babergh at East Bergholt, Great Cornard, Hadleigh, Holbrook and Sudbury. All but Holbrook receive revenue support from Babergh. This report seeks to appraise members of a consultant's report for management options for the dual use facilities at three sites within the District and also the Quay Theatre, Sudbury (which receives significant annual revenue support from Babergh).

2. RECOMMENDATIONS

- 2.1 That if South Suffolk Leisure wish to pursue the option of providing services from the Dual Use Facilities (rather than leasing those facilities) Babergh would be willing to enter into discussions and consider proposals put to them.
- 2.2 That the Quay Theatre be encouraged to explore the possibility of increased joint working with the two local schools in respect of their dance, drama and theatre facilities.

The Committee is asked to make recommendations to Strategy Committee.

3. FINANCIAL IMPLICATIONS

3.1 If the recommendations in this report are adopted then there are no new financial implications to the Council.

4. RISK MANAGEMENT

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
Failure to make a decisive decision on the consultant's report.	Very low	Marginal	Acceptance of the recommendations will remove any risk.

5. **KEY INFORMATION**

- 5.1 Just over two years ago the Council commissioned Lawrence Graham, Solicitors, to undertake a piece of work for the Council regarding the future management of Kingfisher Leisure Centre, Sudbury and Hadleigh Swimming Pool, options for the dual use sports centres in the district together with the Quay Theatre in Sudbury.
- 5.2 Since then Kingfisher Leisure Centre and Hadleigh Swimming Pool have been handed over to a newly created trust, South Suffolk Leisure. Because of the volume of work associated with that transfer Lawrence Graham were asked to delay their report on the dual use sports centres and the Quay Theatre. The report from Lawrence Graham has finally been completed and is attached to this report.
- 5.3 Lawrence Graham's view is that East Bergholt, Great Cornard and Hadleigh dual use facilities (Sudbury declined to participate in the review and Holbrook has only recently opened and Babergh does not give revenue support to it) could ultimately be leased to South Suffolk Leisure. However although Lawrence Graham feel this is an option, they also consider that detailed consideration should be delayed until South Suffolk Leisure's existing arrangements for Kingfisher Leisure Centre and Hadleigh Swimming Pool have been in operation for two to three years and the views of Suffolk County Council clarified as to the structure of any new approach. This would also enable other options to be explored, the most obvious being a straight management arrangement where by South Suffolk Leisure simply took over management of the services delivered under a financial agreement rather than formally leasing the facilities.
- 5.4 However, it is felt that the complexities of a lease to Babergh and sub-lease to South Suffolk Leisure, with all the inherent management and maintenance/repair issues that this would create, are such that this is not a viable option and the recommendation has been framed accordingly. Existing funding arrangements would also continue although Members will be aware that the Council is currently undertaking an extensive review of all grants and sponsorships with the aim of entering into longer term service level agreements with core funded organisations. The dual use sports centres would be core funded organisations under the new proposals. It is anticipated that all current funded organisations would have to re-apply under the new policy. The review of grants is intended to be submitted to this Committee at the September meeting.
- 5.5 As far as the Quay Theatre is concerned Lawrence Graham see little scope for savings at the Quay Theatre although combined purchasing with South Suffolk Leisure may assist. There may also be opportunities for increased joint work with the two local schools who have dance/drama and theatre facilities. On balance, unless the Quay trustees so request, Lawrence Graham do not consider there is great merit in a combined organisation with South Suffolk Leisure although the issue should be kept under review.
- 5.6 In conclusion it is considered that Lawrence Graham have undertaken a helpful piece of work which in particular has clarified the position with regard to the Quay Theatre, Sudbury. Whilst leasing the dual use facilities to South Suffolk Leisure via Babergh is not favoured there is nothing to prevent South Suffolk Leisure considering other alternatives. In view of Babergh's financial commitment for dual use any alternative would require involvement from the Council and officers would bring a report to Members for consideration at the appropriate time.

6. **APPENDIX**

Appendix A Report from Lawrence Graham dated April 2007

7. **BACKGROUND PAPERS REFERRED TO:**

None

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BABERGH DISTRICT COUNCIL

Appraisal of the NPDO option for Dual Use Facilities and role of the Quay Theatre at Sudbury

April 2007

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1. INTRODUCTION

- 1.1 Lawrence Graham, Solicitors have been appointed by Babergh District Council ("Babergh") jointly with Peter Kay of Fusion Lifestyle to assist the Council in an appraisal of the NPDO option for dual use facilities in Babergh and the role of the Quay Theatre in Sudbury. The facilities considered are those at Hadleigh High School, East Bergholt School and Great Cornard School Sports Centre which are owned by Suffolk County Council ("Suffolk"). We refer to them all as "the facilities" or "the services" and we have been asked to consider the following issues:-
- The transfer or externalisation of the three dual use facilities to another provider being a non-profit distributing organisation ("NPDO").
 - The role of the Quay Theatre at Sudbury ("Quay") in any NPDO.
 - Recommendations as to the form and structure of NPDO.
 - The likely financial, and other, implications to the Council.
 - The implications for existing staff.
 - The process for implementation.
- 1.2 This report is a follow up to the Appraisal of the Options for the Management of Leisure Services undertaken in January 2005 relating to the Kingfisher Leisure Centre in Sudbury and the Hadleigh Pool. This led to the transfer of these facilities to South Suffolk Leisure ("SSL") on 31 March 2006.
- 1.3 In preparing this appraisal we have had the opportunity of visiting four facilities including those at Sudbury Upper School and Arts College. We met governors and head teachers, together with officers. We cannot speak too highly of the warm welcome we have received throughout the project and the nature of the helpful discussions we have had with all parties, even when presenting some challenging options.

2. EXECUTIVE SUMMARY

2.1 Background

2.1.1 We have been asked to consider the NPDO approach for three dual use facilities in Babergh and the role of the Quay Theatre in Sudbury.

2.1.2 An NPDO comes within the Best Value framework (paragraph 3.3) and Babergh's vision for the future of sport, cultural and leisure is a key driver for the NPDO approach (paragraph 3.2).

2.2 Findings

2.2.1 The Quay Theatre has been the subject of an in-depth review in 2001 which stabilised the organisation following adoption of a number of recommendations (paragraph 4.1.1).

2.2.2 The three dual use centres have an interesting range of facilities including the recently re-opened Great Cornard Sports Centre (paragraph 4.2).

2.2.3 We see little scope for savings at the Quay Theatre although combined purchasing with SSC may assist. There may be opportunities for increasing joint work with the two local school dance/drama studio and theatre (paragraph 4.3).

2.2.4 We consider there are some opportunities for adopting the NPDO approach for the dual use facilities (paragraph 4.4).

2.3 Recommended Option

2.3.1 We recommend that ultimately the dual use facilities are leased to SSL but that detailed consideration should be delayed for the time being (paragraph 4.6.1) and following consultation with Suffolk County Council. During this period other options could be explored, including a direct management arrangement whereby another party such as SSL manages the facilities.

2.3.2 The approach to the leasing arrangements would be on the following basis:-

- the existing arrangements for school use would be enshrined in any transfer;
- the Board of SSL should have a nominee appointed on behalf of the three schools;
- the advantages of such approach are important (paragraph 4.6.1 and 4.6.2);
- there would be the opportunity for modest savings and some income potential (paragraph 10.1);
- these savings (if recycled by way of grant) coupled with a long lease of at least 25 years (rather than the freehold) to the NPDO could assist with possible improvements to the facilities.

2.3.3 On balance, unless the Quay trustees so request, we do not consider there is great merit in a combined organisation with SSL although the issue should be kept under review (paragraph 4.6.3).

2.3.4 Babergh and Suffolk have the necessary legal powers to transfer the facilities to SSL by way of lease, grant-fund and provided services thereafter (Appendix A).

2.3.5 Staff working at the facilities would transfer on their existing terms and conditions of employment under the Transfer of Undertakings (Protection of Employment) Regulations, and the staff could retain their existing pension arrangements (Chapter 9).

2.4 **Next Steps**

2.4.1 If Babergh were minded to support our firm recommendations in this study a number of decisions will be required:

- agreement in due course as to arrangements with Suffolk for any transfer to SSL;
- agreement as to timescale for any transfer;
- preparation of strategy for implementation;
- preparation of SSL business plan including additional grant funding arrangements (Chapter 11).

3. POLICY FRAMEWORK

3.1 Local Government Act 2000

This Act introduced a requirement for local authorities to develop community strategies to address the environmental, social and economic well-being of their areas, and the Community Plan is the response to such requirement to identify the major issues of concern or challenges within the local authority area and set objectives and targets by which they are to be addressed. This approach is being strengthened in the Local Government Bill currently before Parliament.

3.2 Babergh has developed a range of interlocking strategies which bear upon their sport, cultural and leisure activities and facilities. In particular Babergh's vision for the future is where "strong and inclusive communities are built on actual citizenship and where all citizens have the opportunity to develop to their full potential". This is the key driver for all the facilities involved in this appraisal.

3.3 Implications of Best Value

3.3.1 The Local Government Act 1999 ("the 1999 Act") introduced the concept of Best Value to coincide with the abolition of the former compulsory competitive tender regime introduced in the 1980s. In October 1999 The Department of Environment, Transport and the Regions (as it then was) published its important guidance to local authorities in England on Best Value. All local authorities are now required to review their services and such reviews will:-

- **challenge** why and how a service is being provided;
- secure **comparison** with the performance of others across a range of relevant indicators, taking into account the views of both service users and potential suppliers;
- **consult** local taxpayers, service users, partners and the wider business community in the setting of new performance targets;
- consider fair **competition** as a means of securing efficient and effective services.

3.3.2 Regulations introduced under the 1999 Act require Authorities to:-

- consider whether it should be exercising the function as a core function of the authority;
- consider the level of which and the way in which it should be exercising the function;
- consider its objectives in relation to the exercise of the function;
- assess its performance in exercising the functions by reference to any performance indicators specified for the function;
- assess the competitiveness of its performance in exercising the function by reference to the exercise of the same function, or similar functions, by other best value authorities and by commercial and other businesses including organisations in the voluntary sector;

- consult other best value authorities, commercial and other businesses, including organisations in the voluntary sector, about the exercise of the function;
- assess its success in meeting any performance standard which applies in relation to the function;
- assess its progress towards meeting any relevant performance standard which has been specified but which does not yet apply;
- assess its progress towards meeting any relevant performance target.

The NPDO approach comes within the Best Value framework and has been adopted by upwards of one hundred local authorities for sport, leisure and cultural facilities. Indeed, the government has been urging the public sector generally to increase engagement with the social enterprise voluntary sector.

4. KEY FINDINGS AND RECOMMENDED APPROACH

We outline our key findings for the facilities:-

4.1 Quay Theatre at Sudbury

The District Council commissioned a review of the Quay in 2001. This was a detailed and well-researched review and some of the recommendations have been implemented. Reproduced below is the executive summary which applies equally in 2007.

4.1.1 Executive Summary

1. This review was commissioned by the Quay Theatre's three main funders, Babergh District Council, Sudbury Town Council and East England Arts. It follows a traumatic period in the Theatre's history, when, faced with financial difficulties, the Theatre was forced to take measures to secure its future in Autumn 2000.
2. This review involved a process of consultation and research, during which it became evident from responses received that there was public support for the Quay from a wide area and from a range of people. While support for the Theatre was overwhelmingly positive, and its value as a resource for young people was emphasised repeatedly in responses, suggestions included the re-introduction of a film programme, improved marketing and use of the Theatre for a wider range of activities.
3. The Theatre's three main funders emphasised the need for the Theatre to operate viably and for measures to be taken to ensure that it would not continue to experience financial crises as it had over recent years. User groups stressed the importance of the Quay as a venue for their activities and the lack of alternative facilities in the area. Sudbury Dramatic Society and Sudbury Light Operative Society are two groups which have particularly close relationships with the Theatre (particularly the former). They make an annual financial contribution to the Theatre, which is essential to their ability to present work.
4. The Quay is an attractive building, but it has limitations that inhibit its ability to develop and to maximise income. In particular, the seating capacity of the main auditorium (125) limits the extent to which it can generate financial surpluses on its professional programme. The location is somewhat hidden. An option would be to construct a new auditorium on land adjacent to the Quay and continue to use the Quay building to provide ancillary support. In the present circumstances, and until the Quay can prove it has long-term viability, such a major capital scheme does not seem appropriate.
5. There is a view that it might be better to develop a new facility with greater seating capacity and in a more prominent location. However, this could cost in excess of £4 million and might require annual revenue subsidy in excess of £150,000, based on other comparators. It is difficult to see the local authorities wishing to make a commitment of this scale. Other suggestions included using the Upper School as the main arts venue for Sudbury. The school auditorium is a useful alternative venue, and might be used as a venue by the Quay occasionally, when it wishes to maximise ticket sales for a special event for example. However, the school could not accommodate the level of annual usage that the Quay has, including

around 200 performances. it would be quite impossible to transfer the Quay's programme to the school.

6. The Quay's programme is well balanced, providing something for everyone. It consists of around 200 live performances a year with a range of other workshops and classes, many of which cater for young people. 45% of the performance programme consists of amateur and youth shows, and around 50% of professional touring theatre, music and entertainment. There is, in the view of the consultants, considerable potential for developing a regular film programme, showing mainstream films, including second runs, and for this to make a significant financial contribution to the Theatre. [Film programme has been developing profitably]
7. The Quay's current governance arrangements (owned and operated by the Quay Trust with an Executive Committee to take on day to day management) have failed it and a new structure is required. It is proposed that the Trust should continue to exercise direct managerial control of the building until April 2003 and that thereafter, a new company limited by guarantee, with charitable status be set up to lease the building from the Trust and take over the operation of the building. [Completed]
8. The Quay has had a chequered financial history, and has made a loss in five of the last six years. It also has substantial borrowings and some debt that is serviced by annual interest payments, currently amounting to around £17,000. Were this annual expenditure not required the Theatre would have operated at a surplus across the past six years, despite its limited seating capacity. Since the crisis in Autumn 2000, the theatre has strengthened its financial expertise and has made significant progress in putting its house in order in terms of financial accounting and monitoring. The financial position appears to have been stabilised and there is now an efficient financial management team in place.
9. As a result of the reductions in staffing, changes to the ways in which the programme is financed, and a range of other measures to reduce costs and improve financial performance, the Quay is projecting a surplus on the 2001/02 financial year. However, this will only be possible because of the exceptionally high level of volunteer support. This is unsustainable in the longer term and new solutions will be required if the Quay is to maintain its current level of activity and prosper.
10. Comparative research has demonstrated that the Quay received a much lower level of total annual financial subsidy than similar venues providing a comparable annual level of mixed arts programme to the Quay. Through its annual programme it has offered excellent value for money in return for the levels of public subsidy it has received. A number of options have been examined, including cutting back the level of the annual programme of visiting professional work, reducing the Theatre's role to that of an amateur theatre (with around 60 to 70 performances a year) and increasing funding levels to maintain the current level of service to the community.
11. The conclusion is that the only way to preserve the Quay as a mixed programme venue providing a variety of live performing arts and participatory activities, is to increase its funding from the two local authority funders. if the Theatre's local funding base can be enhanced, the Quay could have an excellent opportunity of securing additional external arts Lottery funding to enable it to develop its role as a District-wide provider of

the arts. Furthermore, if it was able to install up to date film exhibition equipment, it could widen its programme and strengthen its income generation considerably. We have estimated that increases in annual grants from Babergh District Council (from £25,492 to £42,750) and Sudbury Town Council (from £7,500 to £14,200) would be required to enable the Theatre to maintain and develop its current role. [The figures for the year ended April 2006 indicate grants of this level]

12. The review concludes that the options are stark. Either the Theatre radically reduces its programme to the level where it will no longer provide around 100 professional performances a year and an associated programme of participatory arts activity, or its funding base is strengthened, enabling it to pursue a strategy of growth which could increase its funding base and enhance its programme so that it can continue to provide a wide-ranging programme for the people of Babergh and South Suffolk.

4.1.2 Overview of financial information

The income and expenditure account for the years 2004/2005 and 2005/2006 is summarised below:-

Income and Expenditure for The Quay Theatre

Income			Expenditure		
	2005/2006	2004/2005		2005/2006	2004/2005
Grants			Operating Expenses	£227,018	£226,267
Babergh DC	£42,318	£50,975	[Includes bar supplies, box office wages and technician's wages and salaries, and repairs/maintenance]		
Eastern Arts Council	£7,017	£13,000			
Sudbury Town Council	£13,086	£13,757			
Other non-operating income	£21,925	£13,087			
[Includes £4,442 from the Friends of the Quay and £7,558 from Appeal Fund in 2005/2006]			Overheads	£51,384	£46,055
			[Includes director's salary, bank interest and payroll]		
Operating Income	£185,201	£186,218			
Loss	£8,255	£5,285			
	£278,402	£272,322		£278,402	£272,322

4.2 Brief description of dual use facilities

4.2.1 Hadleigh High School

This facility consists of:

- sports hall, gymnasium and fitness room (20 stations)
- floodlit multi-games area
- four outdoor tennis courts, three netball courts and 5-a-side football
- playing field area and athletics track in the summer.

Community use is between 6.00pm and 10.00pm weekdays during school term time and 9.00am and 10.00pm weekends and school holidays.

There is an agreement between key partners to increase the community use of the Hadleigh facilities which sets out targets for such use with strong aims and objectives.

Babergh provide funding for 50% of the deficit up to a maximum of £10,000 per annum and have no legal interest in the facility or its site.

4.2.2 East Bergholt School

The 1995 Lottery funded facility consists of:-

- sports hall
- gym and fitness suite (25 stations)
- outside pool.

Community use is between 7.00pm and 10.00pm on weekdays during school term time and 11.00am and 6.00pm weekends and school holidays.

There is also a similar agreement between key partners to increase the community use of the East Bergholt facilities.

Babergh provide funding for 50% of the deficit up to a maximum of £10,000 per annum and have no legal interest in the facility or its site.

4.2.3 Sudbury Upper School and Arts College

Although this facility was outside our review it was useful to inspect the facilities, the bulk of which are late 1970s and consists of:-

- sports halls
- gym and fitness suite (25 stations)
- two squash courts
- six outdoor tennis courts and two gross football pitches.

The school also has a recently constructed arts centre used as a dance, drama and recording studio.

Community use is between 5.30pm and 10.30pm on weekdays during term time and 9.00am and 10.30pm during school holidays, and 9.00am to 5.00 or 6.00pm at weekends. However, the facility is run entirely by the school who receive any income gained from the community use.

4.2.4 **Great Cornard Sports Centre**

This recently re-opened facility consists of:-

- hall
- gym and fitness suite (30 stations)
- dance studio
- astro-turf sports area.

The school has use of a 250 seater Prospect Theatre which had recently benefited from a £100,000 seating makeover. This theatre had a separate entrance and needed some further updating. Whilst there might be some attractions in incorporating this within an NPDO, considerable further discussion would be required. Great Cornard School will have entered into a dual use agreement particularly in the light of the Lottery-funded works, although as the facility is run by the school, all income received from community use is retained by them.

4.3 **Key Issues for all facilities**

4.3.1 **Quay Theatre**

The theatre has successfully turned itself round from the potential disaster in the late 1990s. The accounts for the past few years indicate some stability with the operating income remaining stable as between 2004/2005 and 2005/2006 with a reduction in the Eastern Arts Council grant being balanced by a special appeal. Likewise operating expenses were identical as between the two years with a 10% increase in overheads.

The programme at the theatre is varied and probably does not lend itself to any expansion in usage. As between the two years 2004/2005 and 2005/2006 art events increased from £11,138 to £21,619 although budgeted at £30,572, entertainment events reduced from £32,746 to £19,465 against a budget of £21,796. The bar sales at £53,652 in 2005/2006 were particularly successful although less than the budget at £61,250.

The theatre has outstanding long term loans of approximately £165,000, of which £138,000 is from Lloyds TSB requirement repayment over the years involving bank interest of £8,600 per annum.

We see little scope for savings at the Quay Theatre although the following general financial issues could be considered:-

- possible purchase of some services such as book-keeping and payroll from South Suffolk Leisure or combined purchasing of goods and supplies;

- utilising the Friends of the Quay to explore other methods of charitable donations includes encouraging bequests and other forms of giving;
- part of the Quay Theatre building dates from the late 18th Century and it occupies a particularly attractive site adjacent to the Sudbury basin and the Stour. We feel that this enviable position deserves better usage perhaps as part of an overall regeneration strategy with adjoining landowners.

When we visited the facilities in mid-June 2005 the Sudbury Market Town Partnership was undertaking a survey into the viability of offering cinema presentations in conjunction with the Quay Theatre, Sudbury Arts Centre and Prospect Theatre, Great Cornard. We consider there is considerable merit in close co-ordination of all three venues both to provide opportunities to develop the performing arts in the area but, perhaps more importantly, to invest in the Quay's future audience. Indeed this opportunity would enable further use of the two school facilities in an area where there is currently an under-provision of theatre and musical venues.

In addition, provision of additional rehearsal space in the school premises could perhaps expand booking opportunities at the Quay and create teaching opportunities at the Prospect Theatre.

4.4 **Dual Use Facilities**

We met the Head Teachers at all the schools together with some governors and other staff. Generally the sports facilities are managed by a separate management committee on behalf of the governors. The facilities are managed by a range of part-time and hourly paid staff with a centre manager shared between Hadleigh and East Bergholt. In addition some volunteers were employed at weekends.

The facilities were generally in good condition and had received significant investment over the years, particularly at Hadleigh and, more recently, at Great Cornard.

We had good discussions at each of the schools and the following issues were raised:-

- various degrees of enthusiasm for the NPDO approach;
- schools should be represented on the NPDO board if that is the way forward although this should be without prejudice to any existing management committee arrangement undertaken by the school;
- the NPDO approach should not adversely affect school use or existing dual use agreement;
- opportunity for accessing private finance and increasing community use seen as major advantage;
- the NPDO approach should not affect existing high maintenance standards.

4.5 **Suffolk County Council**

Contracts with officers of the County Council indicate that the arrangements in Babergh differ from other District Councils in Suffolk where there is a more significant legal and financial commitment towards the ownership and management of the facilities. Suffolk would consider any approach as to the future management of the facilities but may well expect to lease them to Babergh for the provision of any underlease to SSL.

4.6 **Recommended Approach**

The Dual Use Facilities

4.6.1 It is our firm view that the three dual use facilities could ultimately be leased to SSL on the following basis:-

- ideally the length and terms of the leases should correspond with the existing leases to SSL;
- if leases to SSL direct were not possible from Suffolk's point of view, Babergh should give consideration to taking leases from Suffolk and entering into under-leases with SSL;
- the Board of SSL should have a nominee appointed on behalf of the three schools and each of them could maintain a management committee to oversee the arrangements;
- the existing SLA arrangement for school use of the facilities would be binding upon SSL and thus strictly adhered to although hopefully further usage of all facilities could be generated;
- we set out in Chapter 10 the financial implications and opportunities a transfer to SSL would afford.

However, it is our view that although this approach is the best approach for the facilities, detailed consideration should be delayed until SSL's existing arrangements have been in operation for two to three years and the views of Suffolk clarified as to the structure of any approach. This would also enable other options to be explored, the most obvious being a straight management arrangement whereby SSL took over management of the facilities under a financial agreement.

4.6.2 The principal advantages of this approach are:-

- SSL's existing facilities and the dual use facilities could be marketed as a whole portfolio thus improving the opportunities for joint programming and spreading of SSL's overheads;
- the overheads associated with the combined management could be shared with opportunity for the schools to access an experienced management team;
- considerable benefits for the people of Babergh could accrue from any transfer by encouraging greater use during the non-school hours.

Procurement

- 4.6.3 Some care will be needed as to potential EU procurement issues following various European Court judgements over recent months, the implications of which have not totally been resolved. However, this may require some form of advertising, the content of which should be considered at the relevant time.

The Quay Theatre at Sudbury

- 4.6.4 There might be some merit in combining (either by way of transfer of engagements or creating a group structure) the Quay and SSL, the advantages are:-

- opportunity for the Quay to spread some of its overheads and benefit from combined general leisure marketing;
- encouragement for the Quay to use the Prospect Theatre at Great Cornard – although we are not envisaging that this latter facility would be transferred to SSL;
- mutual subsidy as between the Quay and SSL through creating more substantial combined organisation.

On balance, unless the Quay trustees so request, we do not consider there is great merit in a combined organisation although the issue should be kept under review.

5. KEY ADVANTAGES AND RISKS OF AN NPDO

5.1 NPDO

We summarise below some of the issues for an NPDO, bearing in mind that both South Suffolk Leisure and the Quay Theatre at Sudbury are NPDOs.

5.1.1 What is an NPDO?

An NPDO is a non-profit distributing organisation. This means that the organisation's profits cannot be distributed (eg to shareholders) but must be reinvested by the organisation to further its objectives. Any surpluses would be used to improve service provision.

5.1.2 Advantages and Disadvantages of an NPDO for Babergh

The key advantages (and disadvantages) of the NPDO model are set out below.

Advantages:

- **NNDR** - There is mandatory relief of 80% in respect of national non-domestic rates on property which is wholly or mainly used for charitable purposes and occupied by an institution or organisation established for charitable purposes only. Local authorities also have discretion to grant additional relief to charities in respect of all or part of the remaining 20% of which only 25% is funding from the central pool thus involving a net 85% saving overall. The Quay already have the relevant relief.
- The local authority also has power to grant discretionary NNDR relief up to 100% to voluntary organisations which are not charitable at a net cost of approximately 75%. This would be appropriate for the non-charitable industrial and provident society ("IPS"). Babergh's policy on such relief to charities and non-profit making organisations provides that the Council would grant 100% discretionary relief to non-charitable NPDOs on premises used wholly for sporting and/or physical recreation purposes. We estimate that net NNDR savings of approximately £67,000 could be achieved for the three dual use facilities although this would benefit Suffolk County Council ("Suffolk") as the owner of the facilities (see paragraph 10.3 below).
- **VAT** – Although the provision of sporting and related facilities qualifies for exemption from VAT when provided by an NPDO under the VAT Act 1994, the transfer of the three dual use facilities to an NPDO is likely to be VAT neutral (see Appendix F and paragraph 10.4).
- **NPDO's Expenditure** - Provided the NPDO is neither "controlled" nor "public-sector influenced" under the Local Government and Housing Act 1989, any capital or revenue expenditure of the NPDO would not affect either Babergh or Suffolk's budget.
- **Single Focused Body** - The NPDO would be a single focused body with a unitary purpose. Experience has shown that such an entity can operate successfully within the private sector.
- **Community Involvement** - There would be an opportunity for community involvement in the management of the three dual use facilities whilst

maintaining the school management committees. This has been a particular strength of the NPDOs Lawrence Graham has represented.

- **Best Value** – The NPDO approach is recommended as an appropriate option under the new Best Value regime as local authorities are encouraged to engage with the voluntary sector and plan positively for diversity in the delivery of services.
- **Social and Economic Agenda** – An NPDO running the existing dual use facilities could contribute towards the Council's social and economic agenda through delivery of social inclusion, contributing towards economic development and enhancing recreational diversity. In addition successful NPDOs have been able to increase employment opportunities at their facilities.
- **Improvement of the Facilities** – As a private sector body, an NPDO could access private finance for improving and enhancing any of the facilities. This would enable the NPDO to respond to changing demands and pressures for such facilities. The growing market for fitness facilities affords a significant opportunity for income generation.
- **Private Finance** – The experience of leisure NPDOs in raising private finance is comparatively recent and has been limited principally to short term loans based upon increased facility usage and skilful budgeting. Fund-raising exercises will be dependent upon the following features:-
 - Ø the extent to which revenue savings from NNDR and VAT are available for reinvestment. As a guide it could be possible to raise £100 of loan finance for each £10 of grant;
 - Ø grant funding arrangements utilising well-being powers (see Appendix D) to give some medium term assurance perhaps to secure private finance for the NPDO;
 - Ø the length of, and covenants continued in, the leases of the facilities as these would form some security for the lending institution assuming Suffolk was prepared to contemplate a lease rather than a licence even if this would be in the nature of an under-lease from Babergh;
 - Ø a sufficiently long lease (at least 25 years) at a peppercorn involving full repairing and insuring obligations coupled with some guaranteed Suffolk and Babergh grant-funding would be a key component of any private funding proposal;
 - Ø the robustness of the NPDO Business Plan and, in particular, its plans for income generation and increased usage;
 - Ø other opportunities available for charitable NPDOs as referred to below.
- **Other Fiscal Advantages** - Registered charities are in a privileged tax position both in respect of their own tax position and their relationship with those who support them. Charities are generally exempt from corporation tax on their own income provided the income is used only for charitable purposes. There would, therefore, be no tax on the operating profit of the

charity. Any significant trading or non-charitable activity would need to be handled through a trading subsidiary.

- **Corporate Sponsorship and Donations** - The fiscal advantage referred to above should attract sponsorship from individuals and companies. It is reasonable to assume that local businesses are more likely to support an NPDO than the local authority although only charitable entities will benefit from the fiscal advantages.
- **National Lottery** - Funding from this source might be more readily available to an NPDO supported by its sponsoring local authority.
- **Other Sources of Funding** - The NPDO would have access to various sources of funding. In addition to corporate sponsorship and National Lottery funds referred to above, other sources of funding available to NPDOs include:
 - Ø Foundation for Sport and the Arts;
 - Ø charitable trusts; and
 - Ø individual donations.

Not only would some of these sources be available to fund capital projects, but also revenue could be generated for certain activities. This would depend on the strategy adopted and the types of activities planned.

- **Council's Continued Involvement** - There are a number of ways in which both Babergh and Suffolk could continue to be involved in the new entity. For example, as a grant-giving body, as landlord (if the facilities were leased to the new entity) and through Board membership (see Chapter 8).

Lawrence Graham Survey

Advantages of Trust Status

- Speed of decision-making free from local government bureaucracy.
- Single focussed body.
- Customer-first improved quality service.
- Opportunity for improved investment by re-cycling surpluses or NNDR savings.
- More focussed and commercial management team.
- Able to control own destiny independent from the local authority.

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Disadvantages:

There are a number of "disadvantages" which should be borne in mind including some affecting only charitable NPDOs:

- **Regulation by the Charity Commissioners** - if the charity is registered as a Companies Act entity it will be regulated by the Charity Commissioners and the new entity must have regard to not only company law, but also the requirements of charity law. There is an argument that Charity Commission

registration is a positive advantage and seen as an important means of safeguarding the assets and service provision. Charitable IPSs would be “exempt” charities and not subject to regulation by the Charity Commissioners.

- **Reversibility** - the assets of a charity can only be used for the charitable purposes of that charity or transferred to another charitable body for similar purposes. Reversibility is, therefore, difficult. Lawrence Graham have, however, had experience of a local authority charitable trust surrendering its lease from the authority (with the Charity Commissioner's consent) when grant funding was withdrawn. Clearly, this option would only be appropriate in the context of grant funding and/or where the charity otherwise gets into financial difficulties.
- This is the key reason for opting for a leasehold arrangement of the buildings, although a long lease is advisable to access private finance.
- **Independence of Charity** - the Trustees' overriding priority is to the beneficiaries of the Trust. The Trustees cannot be controlled by any outside organisation or body and their discretion must not be fettered in any way.
- **Trading Activities** - to the extent that the charitable NPDO is carrying out “trading” or “commercial” activities such as provision of restaurants, bars and catering generally, these would have to be organised through a non-charitable subsidiary unless they are treated as “ancillary” to the charitable function. If this step were not taken there is a risk that the Inland Revenue would seek to tax these activities. In our view the trading activities run at the dual use facilities are such that a trading subsidiary will not be required.
- **Administration** – Any NPDO will involve statutory and administrative requirements associated with any corporate structure.
- **Trustees** – There would be considerable obligations upon the Board members or trustees.
- **Staff** – The TUPE transfer of staff will need to be handled with care and any externalisation will need to avoid a two-tier arrangement for terms and conditions.
- **Central overheads** – Whilst Babergh or Suffolk could provide services to the NPDO it will ultimately be a decision for the NPDO as to the extent to which they purchase the services from a third party. The NPDO will need to employ its own finance, marketing and human resources staff.
- **Loss of Council control** - Although there would be greater community involvement with an NPDO, there would nevertheless be a loss of Council control and thus the NPDO could become vulnerable to changes in the political climate if grants were reduced unexpectedly.
- **Sport and Leisure Services** – Any facilities which remain within the department following an NPDO creation will need to be managed and central overheads would remain pending restructuring although the NPDO could purchase these services from Babergh.

Lawrence Graham Survey**Disadvantages of Trust Status**

The survey revealed a number of different comments, most of which had a bearing on the negotiations prior to transfer - examples included:-

- difficulty for the Trust and staff overcoming "public" perception of activities;
- lack of definition of relationship between the Trust and the local authority;
- the local authority can become "divorced" from the leisure/culture service;
- rising insurance costs;
- unreasonable expectations.

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5.1.3 NPDO Research

Lawrence Graham has published detailed research as to the success (or otherwise) of the twenty or so NPDOs who have taken transfer of sporting, leisure and cultural facilities over the past five years. The results of this research are incorporated in an updated edition of Lawrence Graham's leading publication "Culture in Trust".

6. ARRANGEMENTS WITH SOUTH SUFFOLK LEISURE

- 6.1 We outline briefly the arrangements negotiated with SSL in the series of agreements signed on 31 March 2006 which led to the transfer of the Kingfisher Leisure Centre, Sudbury and the Hadleigh Swimming Pool.
- 6.1.1 SSL took leases of the two facilities for ten years at a peppercorn.
- Babergh agreed a five year grant-funding arrangement involving a reduction in the grant balanced by a planned increase in income and expenditure.
- 6.1.2 The grant is RPI-linked and could be increased if utility costs increase by more than 30% in any year of the five year Business Plan.
- 6.1.3 Arrangements are set out in the key agreement for negotiation of the funding from April 2011 to March 2016. These require SSL to submit a Business Plan by 1 September 2009 in respect of the proposed funding. The same procedure is required for further five year periods.
- 6.1.4 The agreement sets out detailed arrangements covering the following areas:-
- management and staffing;
 - annual service delivery expectations;
 - key performance indicators;
 - core pricing arrangements;
 - reporting, monitoring and performance.

7. THE SSL NPDO MODEL - KEY CHARACTERISTICS

7.1 South Suffolk Leisure

SSL is a Company Limited by Guarantee, the key characteristics of which are:-

- 7.1.1 A charitable company limited by guarantee is an entity incorporated under the Companies Act 1985. It does not issue shares - instead the members of the company undertake to guarantee to contribute a sum of money (usually nominal) in the event that the company is the subject of an insolvent winding up.
- 7.1.2 It is, of course, a body corporate and the liability of the members is limited.
- 7.1.3 It is a vehicle familiar to the private sector and the type of NPDO most widely used by local authorities contemplating the charitable trust route.
- 7.1.4 As a charity registered with the Charity Commissioners, SSL is regulated by the Commissioners as well as the Companies Registry under the Companies Acts.
- 7.1.5 A charitable company limited by guarantee ("CLG") does not have to use the word "limited" after its name as is the case with SSL.
- 7.1.6 As advised at the time of SSL's creation, the charitable directors or trustees are responsible for the proper administration of the charity in the same way as charity trustees of other forms of charity, as well as complying with their duties as company directors under the Companies Act.

7.2 Changes in Law

- 7.2.1 The Company Law Reform Act 2006 introduced some changes in the roles and responsibilities of company directors. However, the majority of the provisions will not come into force until 2008. In addition the Charities Act 2006 contains a number of provisions which, whilst they will have some bearing upon SSL's operation, do not affect any decision to transfer the dual use facilities.

8. CONTINUED LOCAL AUTHORITY AND COMMUNITY INVOLVEMENT

As Lawrence Graham advised prior to the SSL transfer, Babergh and Suffolk's influence can be exercised in three ways: Council Board membership, landlord/tenant relationship and grant funding. We explore these issues below.

8.1 Board Representation

8.1.1 The extent and degree to which the local authority could become involved in the new company or IPS is governed by Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 ("the 1995 Order"). The legal position is outlined in more detail in Appendix A.

In practice if local authority representation at Board level was required it would be restricted to below 20%, ie., 1 out of 6 or 2 out of 11 Board members on the basis that the leases are likely to be at less than the market rent. The position is illustrated below:-

Percentage of local authority nomination rights or associated persons	Authority leases land at less than market rent	Revenue funding in excess of 50% of turnover	Lease at market rent and revenue funding less than 50%
Unincorporated charitable trust	100%	100%	100%
Charitable or non-charitable industrial and provident society	20%	20%	49%
Charitable company limited by guarantee	20%	20%	49%

8.2 Conflicts of Interest

Any elected members serving on the Board of the NPDO will need to be aware to avoid conflicts of interests bearing in mind that as a director of a company their prime duty in law is to act in the best interests of that entity. They would have a personal, non-prejudicial interest to declare at Council meetings on any matters affecting the NPDO.

8.3 Landlord/Tenant Relationship

In the case of an open market transaction Suffolk (as freeholder of the dual use facilities) might expect to transfer the freehold of any facilities and possibly realise a capital sum. However, it is more appropriate to enter into leasehold arrangements where the facilities require substantial funding from the local authority and to enable Suffolk to exercise influence through the landlord/tenant relationship as explained below.

There would thus be a lease of each of the facilities and such relationship would enable the NPDO to seek NNDR relief as occupier of the premises.

The NPDO will seek a long lease of any land or property transferred by Suffolk to attract lottery or private funding and to provide security for the new entity.

Through the landlord/tenant relationship Suffolk County Council, as landlord, will be able to restrict the usage of the premises and ensure that the high standards of

maintenance, repair and cleanliness, for example, are assured. Through the imposition of restrictive covenants Babergh can, therefore, retain considerable influence over the provision of services at the various facilities and, importantly, ensure that the facilities remain accessible to all sections of the community. Suffolk can also impose a bar on alienation, sub-letting, licensing and so forth.

Any transfer of land or property to the new entity should have regard to Section 123 of the Local Government Act 1972, General Disposal Consents 1998, especially if the transfer is for a consideration less than the "best price". The General Disposal Consent 2003 allows a lease to be granted at nil consideration if the value transferred is less than £2 million.

Provision can be made so that the lease reverts back to the authority on insolvency subject to approval of the Charity Commission in the case of a charitable NPDO.

8.4 **Grant Funding**

Section 2 of the 2000 Act and Section 19(3) of the 1976 Act give both Babergh and Suffolk powers to grant aid the new entity. It is anticipated that the parties would enter into a grant funding arrangement.

Babergh and Suffolk is, of course, accountable for the expenditure of public funds and would be required to ensure that the arrangement with the new entity demonstrated value for money. The existing Funding Agreement with SSL could be amended to take into account the conditions of funding which would set out the services to be provided by SSL coupled with revised monitoring and review provisions. Furthermore Babergh and Suffolk could hypothecate parts of the grant towards different aspects of these activities.

Any conditions included in the Grant Agreement must not be deemed to interfere with the day-to-day running of the facilities nor be so onerous as to cause a fetter on the discretion of the Board of the NPDO, particularly if a charitable option is adopted for any of the facilities. A similar five year rolling grant-funding regime could be adopted for the dual use facilities. In addition to assist SSL as it take on these facilities, some form of "guarantee" of funding or recycling the NNDR savings should be considered by Suffolk.

As indicated above it should be possible to structure arrangements for grant-funding so as to enable SSL to attract private finance in its early years towards some of the set-up costs.

8.5 **Community Involvement**

SSL has significant community involvement which could be maintained on the dual use facility transfer, coupled with individual management committees at the three schools.

8.6 **Summary**

There are a number of ways in which the Council can retain and maintain a significant degree of involvement in the governance of SSL adopting the approach already undertaken on SSL's formation. Board representation will, of course, be an important means by which Babergh and Suffolk can influence the operation of the service. However, grant funding would also be a significant factor, particularly in the early stages of operation of any new facilities within SSL.

9. STAFFING ISSUES

Application and Implications of TUPE

9.1 On 6 April 2006 the Transfer of Undertakings (Protection of Employment) Regulations 1981 was replaced by the Transfer of Undertakings (Protection of Employment) Regulations 2005 ("the TUPE Regulations"). The TUPE Regulations implement the EC Acquired Rights Directive (77/187/EEC as amended by Directive 98/50 EC and consolidated in 2001/23/EC).

The TUPE Regulations provide subject to a few minor exceptions that where services are outsourced, insourced or assigned to a new service provider, the TUPE Regulations will apply even in circumstances where no assets transfer. In broad terms, the threefold purpose of the TUPE Regulations is to ensure that:

9.1.1 an employee should not lose his/her job because of a change in the identity of the employer carrying on the operation in which he is involved;

9.1.2 the employee's continuous service, pay and conditions of employment should continue as though the new employer had been the original employer; and

9.1.3 the new employer assumes all responsibilities and liabilities connected with the employment (e.g. liability for compensation arising from industrial injury sustained before or after the transfer).

9.2 It is not possible to contract out of the TUPE Regulations. A dismissal for a reason connected with the transfer will be automatically unfair unless it is for an economic, technical or organisational reason entailing a change in the workforce ("ETO reason"). The phrase "entailing a change in the workplace" has been interpreted by the UK Courts as requiring changes in the overall numbers in the workforce or in their functions.

9.3 At present, employers may not validly change terms and conditions for a reason connected with the transfer. It is important to note that there is no time limit on this restriction. The major consequence of this is that it is not possible to amend terms to harmonise the terms and conditions of the workforce.

9.4 However, it is possible to change terms and conditions if the main reason for the variation is either unconnected with the transfer or is related to the transfer but is for an ETO reason. For example, the employer may need to change a condition due to possible claims for equal value or equal pay which would be covered by the transferring employees.

9.5 As indicated above, dismissals which arise for a reason connected with the transfer, without an ETO reason, are automatically unfair. Liability for any unpaid financial penalties imposed on the transferor employer for such an unfair dismissal would automatically transfer to the new employer at the point of transfer. The current limit for unfair dismissal payments is a basic award of £8,400 and a compensatory award of £56,800.

9.6 The TUPE Regulations also require the transferee employer (i.e. the NPDO) to accept and protect any existing agreements on trade union recognition, consultation and collective bargaining. Consultation is dealt with below.

Consultation Requirements

- 9.7 Under the TUPE Regulations, there is a requirement for the representatives of affected employees to be informed about the transfer and consulted about any measures envisaged to be taken in connection with the transfer. In most cases the representatives will be the trade union recognised by the Council as representing the employment group. Alternatively, employee representatives will require to be elected.
- 9.8 The legal requirement is that specified information is provided to the unions longer enough before the transfer to enable consultation to take place.
- 9.9 If an employer fails to consult in relation to a transfer, the trade union or elected employee representatives can apply to a Tribunal for compensation of up to 13 weeks pay in respect of each affected employee. The TUPE Regulations provide that the transferor and the transferee will be jointly and severally liable for any failure to inform and consult with affected employees.

Processes Leading to Employee Transfer

- 9.10 Employment law incorporates a requirement for employers to deal with their employees in a fair and reasonable way. It is essential therefore, that the processes leading to transfer are fair and reasonable, both in their nature and application.
- 9.11 Providing employees with clear and up to date information about how they will be affected by the transfer proposal is part of that fair process. In any event, employees assigned to the undertaking and who are, therefore, likely to be transferred, should be informed, in writing, as soon as possible after the two organisations have agreed in principle to the transfer.

Identification of Transferring Staff

- 9.12 Who is assigned to the undertaking is determined by reference to:
- 9.12.1 the amount of time spent by the employee on that part of the business;
 - 9.12.2 the amount of value given to each part by the employee;
 - 9.12.3 the contract terms showing what the employee could be required to do;
 - 9.12.4 how the employee's costs have been allocated between different parts.
- 9.13 It is important to be aware that there are no hard and fast "cut off points" in terms of the allocation of an employees time. Experience has shown that dealing with the concerns and uncertainties of employees is the most time consuming aspect of any transfer. Dealing effectively with this aspect is not just fair process, it is also crucial to gaining commitment to future success. Answers and assurances needs to be based firmly and reliably on confirmed acceptance that the TUPE Regulations apply.

Indemnities

- 9.14 It is often the case that either the transferee employer or the transferor employer (or both) will request indemnities against employment related claims arising or concluding subsequent to the transfer. It is important for both parties to be aware of any current or impending claims (e.g. for industrial injury or breach of contract) and the possible potential for claims arising out of the transfer (e.g. unfair dismissal).
- 9.15 It is important to note here that an employee's legal rights cannot be overridden. The TUPE Regulations impose an obligation on the transferor to provide certain information to the transferee about the transferring employees prior to the transfer taking place including the identity and age of the employees; terms and conditions of employment; information on collective agreements; information about disciplinary proceedings and legal actions.

The Transfer

- 9.16 If a TUPE transfer goes ahead, all employees working in any of the three dual use facilities before the date of transfer will automatically transfer to the employment of SSL on that date. It will be as though existing contracts of employment had been entered into by the new employer. Continuous service will be unbroken.
- 9.17 As the new employment results from transfer, there is no termination of employment by Babergh, who employ all the staff within the facilities. If an employee assigned to the undertaking chooses not to accept transfer when the work transfers, they will have resigned. Although contracts of employment do not change on transfer, it is common for the new employer to confirm the contract terms under their headed paper and to provide the employee with any organisational details they need to know.

After the Transfer

- 9.18 Under the TUPE Regulations, employees have the right to be employed by the new employer on the same contractual pay and conditions that applied at the time of transfer. A contractual condition cannot be changed unless the contract provides management with a right to make the change e.g. a right to vary working hours.
- 9.19 A question often asked is how soon after a transfer can the new employer move to change existing pay and conditions without the change being linked to the transfer, and therefore potentially unlawful. There is no clear answer; the issue is one of fact – is the transfer the reason for the change? If the proposed changes are required to deal with new legislation, or to meet changing market conditions, it should be possible to argue that they are not related to the transfer.
- 9.20 Any provision in an agreement is void in so far as it purports to exclude or limit the operation of any provision of the TUPE Regulations. However, the Employment Appeal Tribunal has said that this cannot serve indefinitely to inhibit the parties from bringing the legal position in line with reality. In brief, the longer the period since the transfer, the easier it is to justify the change as being not related to the transfer.

Pensions

- 9.21 Regulation 10 of the TUPE Regulations provides that any rights relating to occupational pensions are expressly excluded from TUPE provided that they relate to old age, invalidity or survivors benefits. Any benefit under an occupational scheme that does not relate to old age, invalidity or survivors' benefits will, however, transfer to the transferee.
- 9.22 However, the Pensions Act 2004 provides that where transferred employees were entitled to participate in an occupational pension scheme prior to the transfer SSL must establish a minimum level of pension provision for the transferred employees. In practice the transferring staff will almost certainly be within the Local Government Pension Scheme and they will remain within such scheme through "admitted group" status as has been operated by SSL on the March 2006 transfer.

10. FINANCIAL IMPLICATIONS OF SSL OPTION AND OPPORTUNITIES

10.1 Summary of financial implications

The following table summarises the potential benefits and costs (excluding set-up costs) that might arise from transferring the operational of the dual use sites at East Bergholt, Hadleigh and Great Cornard from Suffolk to SSL:

NNDR	£67,077
Marketing	-£20,000
Income opportunity	£50,000
Annual growth	£20,000
Total	£117,077

10.2 NNDR

The NNDR payable on each sports facility together with the potential savings are:

	NNDR	Saving		
		85%	5%	Total
East Bergholt	21,650	17,320	1,083	18,403
Hadleigh	18,836	15,068	942	16,010
Gt Cornard	38,429	30,743	1,921	32,664
				67,077

Source: Valuation Office Agency

These annual savings become available to reinvest in the facilities (either directly or to lever in additional funding), and can be diverted to equip, operate, market and develop the facilities, including planned gym re-equipping and installation of appropriate IT systems.

As NNDR is currently paid by Suffolk, deployment of savings would need to be with their agreement.

10.3 VAT

With current income profiles and a relatively high proportion of income already VAT-exempt, the potential for immediate VAT gain is limited. Therefore, it is projected that any transfer to SSL would be VAT neutral.

10.4 Management Costs / Overhead

There should be little change (and certainly no increase) in management costs to either SSL or the schools since the sites are currently adequately resourced and SSL's management team and systems are sufficient to support an enlarged portfolio. Bringing the sites into one management entity will enable future opportunity to pool management resource and develop mutual support relationships. Site managers will benefit from enhanced support from an experienced management team with relevant expertise.

10.5 **Joint Programming and Marketing**

At present, the centres do not have a noticeable marketing profile, with little current synergy in programming or promotion. This is particularly an issue in both Hadleigh and Sudbury, where community facilities funded by Babergh do not operate within the same management regime and even, to some extent, compete with each other.

Undoubtedly the facilities in Babergh would benefit from joint promotion, cross-marketing and complementary programming (especially given the proximity of several of them). Bringing all the facilities together into the same management vehicle would mean that the dual-use facilities would achieve this through the support of SSL's expert management team and a higher profile marketing effort.

At present, marketing expenditure across the 3 dual-use sites combined is less than £10,000 per annum, which is not sufficient to properly promote and develop the facilities. In order to establish a suitable marketing profile, NNDR savings can support increased promotional expenditure. Allowance for an additional £20,000 per annum expenditure on marketing has been made in our analysis.

10.6 **ICT**

In order to accurately monitor visits and attendances and to effectively manage and develop customer relations, appropriate IT systems are required. Depending on the choice of system, the annual additional cost could be in the region of £10,000 per site. This is considered an essential element in realising the potential of the facilities and should be treated as a set-up cost.

10.7 **Maintenance and Premises**

Maintenance is currently carried out by the school/Suffolk directly; for ease of implementation and to minimise VAT loss, these arrangements should continue and be set out as a Suffolk responsibility in any lease arrangements.

In such a scenario, control of maintenance of M&E, fabric and structure is retained by the school/SCC under the lease arrangements, while demand risk and operational responsibilities are transferred to SSL.

Similarly, payment of utilities could continue to be met by the school/SCC to further mitigate VAT loss.

10.8 **Opportunities**

A portfolio combining all 3 dual-use sites together with Hadleigh Pool and Kingfisher Leisure Centre, marketed jointly within the South Suffolk brand, and offering combined access, means that a meaningful and competitive subscription membership option can be successful.

At present, none of the individual centres offers this option, but such a proposition is proven in the current market to be a winner. Note that offering such an option does not preclude pricing for access or the ability to offer 'pay and play' payment options.

Applying Mintel survey data to ONS population data for the immediate population around the dual-use facilities, there is a combined potential market in excess of 2,000 for health and fitness facilities; if only 20% (c.400 customers) of this market were captured as subscription payment customers, this would deliver additional annual revenues of over £170,000. After allowing for additional costs of marketing and of

establishing a sales team, net benefit (profit) resulting from this level of income could be in excess of £50,000 - £60,000 per annum.

	East Bergholt	Great Cornard	Hadleigh	Total	Propensity	
All People Aged 16 and over in Households	2555	3003	6,332	11,890		
AB: Higher and intermediate managerial / administrative / professional	865	665	1,449	2,979	25%	745
C1: Supervisory, clerical, junior managerial / administrative / professional	761	892	1,789	3,442	22%	757
C2: Skilled manual workers	281	588	1,209	2,078	17%	353
D: Semi-skilled and unskilled manual workers	242	571	848	1,661	12%	199
E: On state benefit, unemployed, lowest grade workers	406	287	1,037	1,730	7%	121
Total (excluding group E)				10,160	20%	2055
			mkt share		20%	411
			membership rate per month		35	14,382
			annual income			172,584

Key to maximising the potential of the scheme are high-quality facilities, effective promotion and marketing, appropriate pricing and a focused management and sales structure. With these elements in place, the combined Babergh facilities would offer an attractive USP with the potential for great success.

10.9 Ongoing Income growth potential

Experience has shown that, in the Trust sector, single focus organisations are able to develop an identifiable brand and marketing presence which can typically bring about 5% improvements in income generation.

The majority of existing Trusts continue to develop and expand their activities, including gains within their existing portfolio: SpoRTA industry surveys for the past three years (60 Trusts) consistently show that over 75% of Trusts consistently achieve up to double-digit percentage year-on-year increases in income.

In this context, growth which delivers a net gain equivalent of up to 5% of current income levels in each of the first two years of operation could reasonably be expected. For the purposes of this assessment, we have allowed a prudent projection of 3% growth per annum for each of years 2 and 3.

Such a rate of growth would deliver a total additional benefit across the 3 sites of some £20,000 per annum by year 3.

11. THE PROCESS OF IMPLEMENTATION

11.1 Attached at Appendix B is a detailed checklist of the issues for consideration on an NPDO transfer. We consider that the transfer of the dual use facilities could be achieved within a period of three to six months.

11.2 Key Issues

We outline below those areas where particular care will need to be taken during the implementation process.

11.2.1 Board Representation

As suggested above SSL should permit the appointment of a representative of the three schools on its Board and agree a mechanism for incorporating reporting arrangements as between their Board and the individual school management committees.

11.2.2 Working Together

As the SSL transfer process is one where the interests of Babergh, Suffolk and SSL are identical, it is clearly important that all stakeholding parties work together as early as possible. There will be some difficult negotiations on issues such as grant funding, terms of the lease (including responsibility for the building maintenance) and extent of recycling of the NNDR savings by Suffolk and thus there needs to be a clear understanding from the commencement of the process as to the framework for the transfer.

11.2.3 Robust Business Plan

SSL will need to prepare a robust business plan both to deal with the immediate issues following transfer, including any investment needs, and also to set out a strategy for the future. Such document will be of some importance as it will form the basis of the revised funding arrangements.

11.2.4 Disengagement issues

The three dual use facilities represent an important part of Suffolk's facilities and thus the externalisation will need to be handled with care bearing in mind the following issues:-

- importance of ensuring close (contractual) links between SSL, the individual school and the remaining services;
- effect of the externalisation upon Suffolk and Babergh's general and the Department's overheads and recharges;
- possibility of the NPDO purchasing services from either Suffolk or Babergh under the well-being powers which would ease any financial pressure for a transitional period.

APPENDIX A: KEY LEGAL ISSUES

(Chapter 9)

1. LOCAL AUTHORITY POWERS**1.1 Powers base**

Both Suffolk and Babergh currently provides a wide range of Sport and Leisure Services. Such provision is made pursuant to its general and specific powers set out under local government legislation. It is necessary to consider the extent of those powers and, in particular, ascertain whether they permit both authorities to arrange for the provision of the services by others as proposed in this report.

1.2 Powers of Local Authorities to provide recreational facilities

Section 19(1) of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act") provides that "a local authority may provide, inside or outside its area, such recreational facilities as it thinks fit", including the power to provide:

- indoor facilities (tennis, squash and badminton courts, swimming pools, skating rinks and dance studios);
- outdoor facilities (athletic grounds, tennis courts, football pitches, golf courses and bowling greens);
- boating and water sports facilities;
- premises for use of clubs or societies having athletic, social or recreational objects;
- staff in connection with any such facility;
- any ancillary facility such as parking spaces and food and drink counters, and also any equipment, supplies or other assistance required (Section 19(1) of the 1976 Act).

Section 19(3) provides that "a local authority may contribute by way of a grant or loan towards the expenses incurred or to be incurred by any voluntary organisation in providing any recreational facilities which the authority has the power to provide pursuant to Section 19(1)" For the purposes of this sub-section, the "voluntary organisation" means any person carrying on or proposing to carry on an undertaking otherwise than for profit, i.e. a NPDO such as SSL.

Hence, both authorities will have the power pursuant to Section 19(3) of the 1976 Act to provide grant aid to a NPDO established to provide the recreational the facilities which Babergh has the power to provide itself pursuant to Section 19(1) of the 1976 Act.

Local Authority functions in relation to the provision of entertainment, arts and crafts, theatres, concerts and other such activities are contained in Section 145 of the Local Government Act 1972 ("the 1972 Act"). This Section empowers a local authority to provide these services itself or arrange for the provision of the services by a third party and then contribute towards the expenses of a third party or do anything necessary or expedient for the delivery of entertainment or the arts.

1.3 Powers of Local Authorities to Establish an NPDO

1.3.1 Section 2 Local Government Act 2000 ("the 2000 Act")

The promotion or improvement of well-being power contained in Section 2 of the 2000 Act provides sufficient powers to the Council to establish an NPDO, including incurring costs associated with its establishment.

- "Every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects:-
 - A) *the promotion or improvement of the economic well-being of their area;*
 - B) *the promotion or improvement of the social well-being of their area; and*
 - C) *the promotion or improvement of the environmental well-being of their area." (s. 2(4))*
- "The power under Sub-Section (1) includes the power for a local authority to:-
 - A) *incur expenditure;*
 - B) *give financial assistance to any person;*
 - C) *enter into arrangements or agreements with any person;*
 - D) *co-operate with, or facilitate or co-ordinate the activities of any person;*
 - E) *exercise on behalf of any person the functions of that person; and*
 - F) *provide staff, goods, services or accommodation to any person" (s.2(4)).*

1.3.2 Section 3 of the 2000 Act prohibits as local authority from doing anything which they are unable to do by virtue of any prohibition or limitation on powers contained in any enactment and also places a restriction on the raising of money by use of the power.

Section 2(3) provides that when determining whether or how to exercise the well-being power, a local authority must have regard to the community strategy prepared under Section 4 and clearly Babergh's Community Plan and its accompanying strategies envisaged the developments outlined in this study. Further, Section 3(5) requires that before exercising the well-being power, a local authority must have regard to any guidance issued by the Secretary of State.

Guidance was issued by the then Secretary of State in March 2001. Section 6 of the Guidance sets out the Government's purpose in introducing the well-being power as "to reverse the traditionally cautious approach, and to encourage innovation and closer joint working between local authorities and their partners to improve communities' quality of life."

1.3.3 Section 10 provides that "the breadth of the power is such that councils can regard it as a power of first resort. Rather than searching for a specific power elsewhere in statute in

order to take a particular action, council's can instead look at the well-being power in the first instance and ask themselves:

- Is the proposed action likely to promote or improve the wellbeing in our area?
- Is the primary purpose of the action to raise money?
- Is it explicitly prohibited on the face of other legislation?
- Are there any explicit limitations and restrictions on the face of other legislation?"

If the answer to the first question is yes, and the next two questions no, then Babergh and Suffolk could proceed with the proposed action, subject to the answer to the third and fourth questions i.e. any restrictions or limitation that may apply by virtue of being spelt out on the face of other legislation

There is no explicit limitation or restriction on the face of any particular enactment which prevents the council from proceeding with the establishment and assistance in respect of costs for SSL. Provided, therefore, that the council can answer positively that the transfer of the services to it is likely to promote or improve the well-being in its area and that the primary purpose of the action is not to raise money then the well-being power provides all the authority necessary for the council to proceed. The council need, therefore, to consider the community strategy it has prepared to ensure that the exercise of the well-being power in establishing and funding SSL does not run counter to the aims and objectives of the strategy.

1.4 **Provision of Services to SSL**

Section 1 of the Local Authorities (Goods and Services) Act 1970 provides that a local authority may enter into an agreement with another local authority or "public body" for the supply of goods and materials, the provision of professional or technical services or for the use of vehicles or plant provided SSL is designated as a "public body". Alternatively, Babergh can rely on the well-being powers in the 2000 Act referred to above although there are restrictions on charging for the services or the trading powers in the Local Government Act 2004.

2. **Property Issues**

Section 123 of the Local Government Act 1972 governs the disposal of land by local authorities and provides that a "council shall not dispose of land [including a lease of more than seven years] for a consideration less than the best that can reasonably be offered."

There is a general consent under Section 19 of the 1976 Act and the General Disposal Consent 2003 in respect of any land interest allowing authorities to let at any consideration provided the value of the interest is less than £2 million.

However, any lease at less than market value would reduce the local authority constitutional involvement to less than 20% except in the case of an unincorporated trust. If market rent was charged the grant would need to be adjusted accordingly.

In our view leases of at least 25 years should be granted as this would assist the trust with any private finance and provide an important degree of security for the new entity.

The lease would need to contain provisions dealing with repair and maintenance obligations, alteration, use of facilities and insurance.

APPENDIX B: CHECKLIST FOR TRANSFER OF DUAL USE FACILITIES TO SOUTH SUFFOLK LEISURE

(Paragraph 11)

		Yes	No
1.	Discussions with Interested Parties		
1.1	Members		
1.2	Staff		
1.3	Trade Unions		
1.4	Key Stakeholders including:- <ul style="list-style-type: none"> • users • the three schools • District Auditor 		
2.	SSL Board		
2.1	Consideration of additional school representation on Board		
3.	Stock Condition Survey		
	A stock condition survey to assess the condition of the property to be transferred should be undertaken and provide details of: <ul style="list-style-type: none"> • Urgent repairs • Other catch-up repairs • Medium term capital and maintenance requirements • Assessment of revenue costs for SSL Business Plan • Information for drafting leases 		
4.	Property Issues		
	Decisions will be required on a range of issues relating to the properties		
4.1	Freehold transfer		
4.2	Leasehold or licence		
4.3	Prepare heads of terms for lease(s) or licence(s) with key terms such as		
4.3.1	rent (peppercorn?)		
4.3.2	length of term		
4.3.3	responsibility for buildings including main structure and interior		
4.3.4	insurance arrangements		
4.3.5	alienation provisions (if any)		
4.3.6	user		
4.3.7	preparation of plans		
4.3.8	car parking arrangements		
5.	Staff Issues		
5.1	Prepare list of TUPE employees employed in facilities		
5.2	Consideration of other potentially TUPE staff in other departments		

		Yes	No
5.3	Staff structure		
5.4	Consideration of existing staff terms and conditions and impact upon SSL		
5.5	Application for admitted group status with relevant Local Government Pension Scheme in existing SSL scheme		
5.6	Formal TUPE consultation		
6.	Services to be provided to NPDO and disengagement matters		
6.1	Consideration needs to be given to third party contracts such as:-		
6.1.1	maintenance of plant and equipment		
6.1.2	leases of equipment		
6.1.3	contracts for building and grounds maintenance		
6.1.4	catering or bar concessions		
6.2	NPDO needs to consider services (if any) it wishes to purchase from the Council and service level agreements drafted.		
7.	Transfer Documentation		
	The documentation will include the transfer agreement, leases or other property documents (see above) and funding agreement. Specific issues arising are as follows:-		
7.1	Transfer Agreement		
7.1.1	assets to be transferred		
7.1.2	debts due to either Babergh or Suffolk		
7.1.3	stock in bar, café or shop		
7.1.4	staff details and warranties		
7.1.5	assignment, novation or arrangements for contracts		
7.1.6	transfer of equipment		
7.1.7	service level agreements (see above)		
7.1.8	assignment of any property warranties		
7.2	Grant Funding Agreement		
7.2.1	confirmation of guaranteed funding arrangements		
7.2.2	impact of Business Plan upon funding agreement		
7.2.3	conditions attached to funding		
7.2.4	arrangements for monitoring		
7.2.5	issues relating to wider Babergh agenda		
8.	SSL Business Plan		
	SSL will need to amend its five year business plan. This will cover the addition of the three dual use facilities covering:-		
8.1	aspirations		
8.2	plans for catch-up repairs		
8.3	plans for developing the service		
8.4	finance – this will need to consider:		
8.4.1	extent of grant funding		
8.4.2	VAT		

		Yes	No
8.4.3	NNDR savings		
8.4.4	extent of reinvestment by Suffolk in facilities through NNDR savings		
9.	Other Issues		
9.1	IT arrangements		
9.2	Transfer of music and dancing licences		
9.3	Transfer of alcohol licences		
9.4	Set up revised payroll and accounting systems		
9.5	Data Protection Act		