

Grangewaters - Initial Options Analysis

	Trust	Community Interest Company (CIC)	Retain in Local Authority	Commission Out	Charitable Incorporated Association
Model	A legal organisation which can be set up by anyone who has decided they want to set aside some of their assets or income for charitable causes	A business with primarily social objectives with surpluses are principally reinvested for that purpose in the business or in the community	The Service is currently located within the Childrens Services Directorate as a part of the Early Years, Families & Communities service.	There is an option to commission out the centre, however there would be no funding to go with this it would just be the opportunity to run the centre that was made available.	A charitable incorporated organisation, or CIO, is a new legal form for a charity. It is based on a constitution registered with the Charity Commission and is designed for charities that need the commercial advantages that exist by having a more business like structure.
Example of this model	Stubbers Outdoor Education Centre	Thurrock Lifestyle Solutions	Essex Outdoors	PGL Ltd	New Model
Advantages	<ul style="list-style-type: none"> - Tax benefits - Ability to apply for grant funding - Provision of volunteering opportunities and community involvement - Assets remain in the control of the council 	<ul style="list-style-type: none"> - Flexible company form - Can be developed with charitable status - Limitation of risk - Clear ownership structure / governance - Ability to be community led by a range of stakeholders - Public accountability - Recognition of financial institutions and investors 	<ul style="list-style-type: none"> - the centre continues to be supported by the Local Authority - there is clear ownership of the structure and governance - there is a limitation of risk - the centre retains flexibility to adapt to 	<ul style="list-style-type: none"> - there would be a clear contract defining the use of the centre - it is a relatively simple exercise within the current procurement regulation - the future of the centre would be secure for 3-5 years 	<ul style="list-style-type: none"> - single registration and regulation - Clear duties under governing regulations. - single annual report and accounts - lower registration costs - simplified constitution - greater flexibility

			change in markets - there is public accountability		
Disadvantages	<ul style="list-style-type: none"> - Uncertainty regarding grants and funding - Limitations regarding Council representation - Sustainability going forward with potential changes to Trustees 	<ul style="list-style-type: none"> - the ability to borrow money could present a risk - there is the need to register with the charity commission and company's house. 	<ul style="list-style-type: none"> - restraints with regards to marketing and PR - limited flexibility - limited ability to respond quickly to market changes due to the constitutional requirements of being a part of the Local Authority - Financial implications if income generation targets are not met 	<ul style="list-style-type: none"> - there would be limited flexibility - there are limitations on the community engagement with this option - there is not the opportunity to include a social purpose within the aims of commissioning - it is not possible for the centre to be community led by a range of stakeholders 	<p>Although establishing and running a CIO should be simpler than establishing a charitable company, it will not be as straightforward as running an unincorporated association or a charitable trust</p>
Legal Implications (please note TUPE will apply to all options other than 'retain in LA')	<p>The trust is governed by a trust deed. It sets out the framework within which the trustees must operate. It will generally describe:</p> <p>The powers and responsibilities of the trustees;</p> <p>How they are appointed and removed;</p> <p>The approach to</p>	<p>It is what a business does with its profits that determines whether it is a social enterprise, rather than its specific legal structure.</p> <p>The Charities Act 2006 defines a charity as a 'body or trust which is for a charitable purpose that provides benefit to the public'. It lists 13 charitable purposes, and any charity must have purposes falling within that list.</p> <p>An incorporated business is a legal entity in its own right. This means that it can enter into contracts, employ staff, lease</p>	None	Subject to the constitution requirements of the Council	<p>The legal framework for the CIO is set out in the Charities Act 2011 and in two sets of regulations and an Order. These are: - the Charitable Incorporated Organisations (General Regulations 2012 (General Regulations)</p> <ul style="list-style-type: none"> - the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (Dissolution Regulations) - The Charity Tribunal (Amendment) Order

	<p>investment;</p> <p>How the constitution (but usually not the charitable purposes) can be altered;</p> <p>Charitable trusts, as with other trusts, are administered by trustees, but there is no relationship between the trustees and the beneficiaries.</p>	<p>property and have its own obligations and liabilities.</p> <p>Incorporation limits the personal liability of its management committee, although it does not remove it altogether.</p> <p>Incorporation is an important consideration if the social enterprise intends to employ more than a few staff, take on significant property interests or undertake major contractual obligations.</p> <p>Unincorporated organisations can operate relatively informally, being governed only by their constitutions. However, this means the powers and processes for decision making can be unclear. Incorporation involves the formalisation of governance structures within a legislative framework.</p> <p>Incorporation provides an established formal structure for stakeholder membership.</p> <p>With limited liability comes regulation and disclosure requirements, which can increase public confidence in the company. Limited companies have to have a registered address, file their constitutions, annual accounts and prescribed details of their</p>			<p>2012</p>
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		directors etc. All charities are subject to charity law regulation.		
Procurement Implications	Charity procurement must remain fully compliant with UK and EU procurement regulations. However, the trust can incorporate its own procurement criteria – thresholds and quoting structure in line with the council's.	Guidance from Social Enterprise London cites the precedent set through the Department of Health's right to request, this indicates that as a local authority employee establishing a social enterprise in order to deliver a service currently provided by the council, the commissioning process should not be open to competition. Ideally the contract with the local authority should be guaranteed for at least three years. However it is worth noting that although the main contract with the local authority might not be competitive, under EU procurement regulations, any subsequent contract following the initial contract and any contract the organisation bids for outside the local authority is likely to be open to competitive tender.	None although any services contracted out will be subject to the Councils Procurement regulations	Full procurement processes would need to be followed and the value of the business indicates that this will fall under European tender regulations.
Cost / Financial Implications	Overheads in the region of £75k need to be absorbed, a Business Manager would need to be employed and be	A small registration fee would be applicable in this case to register for CIC status. Could attract social investment tax relief. A CIC could pass on	Central overheads of approx £75 will need to be factored into the Budget and be recouped through fees charged.	Capital investment would remain with the Authority, overheads of approx £75k would need to be factored into the budget
				Overheads in the region of £75k need to be absorbed, a Business Manager would need to be employed and be responsible for the

	<p>responsible for the overall running of the site, resourcing, HR, planning and financial control. All site costs and running costs would need to be self funding. Capital investment will need to be considered for the premises improvement costs.</p>	<p>assets or profits to a charity</p> <p><u>Co-operative Bank</u> is launching a free bank account for social enterprises with a turnover of less than £1m. The Social Enterprise Directplus account will offer interest on balances of £2,000 or more.</p>	<p>Any overspends will remain with the Authority should this occur. Significant Capital finance is also required to update the site to improve the quality of provision and for Health and Safety reasons.</p>	<p>for the residual costs or agreed as part of the commissioned income received by the Centre.</p>	<p>overall running of the site, resourcing, HR, planning and financial control. All site costs and running costs would need to be self funding. Capital investment will need to be considered for the premises improvement costs.</p>
Value for Money	<p>There is the opportunity to secure added value and social capital through the establishment of an agreed charitable purpose; trading is restricted to this however income for this purpose is tax exempt.</p> <p>The structure is designed to earn income through donations and fundraising.</p> <p>Tax and business rate exemptions apply</p>	<p>There is an opportunity to secure added value through trading as this is unrestricted by a governing document, however there is not the opportunity to fundraise.</p> <p>This structure is designed for organisations that will have primarily social purposes but who earn a significant proportion of their income through the selling of goods and services.</p>	<p>There is an opportunity to secure added value through the further development of a traded offer however charitable funding and grants are limited for local authority run services.</p>	<p>The opportunity to secure added value would be limited to the purposes set out in the contract award.</p>	<p>By having charitable status with the ability to trade there is the opportunity to secure added value and to enter into contracts.</p>
Ownership and Governance and Constitution	<p>Assets owned by trustees and managed in interests of beneficiaries on the terms of the trust.</p>	<p>As for other limited companies, but subject to additional regulation to ensure community benefits.</p>	<p>Governance and ownership would retain in the local Authority</p>	<p>Governance would be through the contracted organisation with a legal agreement outlining the services to be delivered.</p>	<p>The CIO has the benefits of legal personality and limited liability, but will be solely registered with, and regulated by, the Charity Commission for England and Wales. Due to its</p>

						limited liability, the CIO structure should make it easier for charities to recruit and retain trustees, and to engage in contracts and hold property.
Is it a Legal person distinct from those who own or run it	No, which means the Trustees are personally liable	Yes, members' liability limited to amount unpaid on shares or by guarantee.	No	To be confirmed in Legal Agreement	The Charity has a legal personality of its own, enabling it to conduct business in its own name rather than the name of the Trustees	
Can its activities benefit those who own and/or run it	Not usually. Trustees/directors can only benefit if trust, court or Charity Commission give permission.	Yes, but must benefit the wider community. Can pay limited dividends to private investors and directors can be paid.	No however LA would be in a position to respond to changes around key health and education targets, and as an overall benefit to Thurrock residents may be achieved.	No	Not usually as activities are regulated by the Charities Commission and any restrictions in your governing document.	
Assets "locked in" for community benefit	Yes, if trust established for community benefit.	Yes, through standard provisions which all CICs must include in their constitutions.	Yes	Yes	Yes if the LA retains ownership and leases to CIO through contractual agreement	
Can it be a charity and get Charitable status tax benefit?	Yes, if it meets the criteria for being a charity.	No, but can become a charity if it ceases to be a CIC.	No	Could be considered if successful organisation is a registered charity.	Yes it is registered with the Charities Commission	