

# Wirksworth Learner Pool

A report into the current usage and community support for the pool, and options for the future management and ownership of the pool.



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## 1 Executive Summary

This is a report into the viability of Wirksworth Leaner Pool being run by the Community as a not-for-profit enterprise. The report was commissioned by Derbyshire Dales District Council and the Anthony Gell Trust and the research and writing of the report was undertaken jointly by Rural Action Derbyshire and Derbyshire Dales Council for Voluntary Service. A wide range of stakeholders were consulted with about the pool and its future using a number of methods from one-to-one discussions through to a large public consultation event. Options for the future governance and management of the pool are analysed and recommendations made regarding this. Financial information regarding the pool was reviewed and some conclusions drawn from this about the financial viability of the pool if it were to move into community ownership. Information was sought from relevant bodies regarding the situation of community owned pools nationally to establish the kind of opportunities that are open to them and challenges they face.

The principle findings of the report are as follows:

- The pool is a well-used facility and there is strong public support for the pool from a wide range of agencies and individuals.
- The pool is particularly suitable for non-mainstream swimmers such as very small children, older people, disabled people and learners.
- The pool has the potential to be marketed to a wider range of customers.
- There are suitable legal / governance models that could be utilised if the pool were to pass into community ownership. Which model is most suitable could only be determined when a business plan for the pool is put in place, because the way in which the pool would be financed would influence the choice of legal structure.
- The recent financial history of the pool presents difficulties in terms of its future sustainability and its attractiveness to the community as a not-for-profit enterprise. It loses money and requires significant capital investment, and this would have to be addressed realistically in any business plan that was drawn up.
- There are some important lessons to be learned from the experience of community owned swimming pools across the UK, and there are some clear recommendations from the Amateur Swimming Association about the criteria that should be applied when assessing a pool's suitability for passing into community ownership.

## 2 Introduction

In March 2009, Derbyshire Dales CVS (DDCVS) and Rural Action Derbyshire (RAD)\* were approached separately by Derbyshire Dales District Council (DDDC) with a proposal to undertake a piece of consultation and research work regarding the future management and governance of Wirksworth Learner Pool (WLP). DDCVS and RAD elected to undertake this piece of work as a joint project, and an agreement to undertake the work was signed by DDDC and DDCVS/RAD in August 2009\*\*. A summary of the work commissioned is as follows:

*'Derbyshire Dales District Council will commission a piece of work to establish the viability of the Wirksworth Learner Pool being run by the Community as a not-for-profit enterprise. This work will include consulting stakeholders about their support for the project and the input that they could have into the project; establishing the current situation regarding governance arrangements for the facility; carrying out an options analysis for governance arrangements in the future; and writing a short action plan for taking the project forward, assuming that there is evidence of a willingness to get involved in the project by interested parties.'*

The history of WLP is well-documented, and whilst an exploration of that history necessarily does not form a significant part of this report, it is usefully summarised in the document provided by DDDC that is attached at Annex A.

\* Formerly know as Derbyshire Rural Community Council until October 2009

\*\* The work was in fact jointly commissioned by DDDC and the Anthony Gell Trust

## 3 Stakeholder Consultation

A key part of the project was to consult the pool's 'stakeholders'. These were identified in the initial agreement with DDDC. The style of consultation varied from one-to-one interviews through to a public consultation drop-in style event. However, irrespective of the style of the consultation that was used, the same basic range of topics was covered with each stakeholder group. The way in which these topics were couched with the different stakeholders was modified to reflect the differing nature of the stakeholder groups. The main points covered with all of those consulted were as follows:

- Their current usage of the pool, or the value of the pool to their organisation;
- Alternative facilities that could be used, and the distinctiveness of and need for the WLP as compared with other facilities.
- The impact that not having the pool available would have.
- Any improvements and additions that they would like to see to the existing facility.
- Their ability and willingness to contribute to the future funding, governance, management and administration of the pool.

Below is a summary of the consultations that took place and the main findings of each.

### **Derbyshire Dales District Council**

Extensive discussions were held with relevant officers from DDDC during the consultation period. As the only trustee of the Charitable Trust, and as the organisation that currently has responsibility for managing, funding and maintaining WLP, seeking the views of DDDC

was an important part of the consultation exercise. The main points from this part of the consultation were as follows:

- The origins and history of WLP is a significant factor when considering how it should be managed in the future.
- WLP does not form an integral part of the leisure 'core offer' provided by DDDC, but is maintained as an addition to the basic offer. In other words, the principle swimming facilities offered by DDDC to residents of Wirksworth are those at Matlock.
- DDDC has invested significant resources into leisure facilities across the District, and Derbyshire Dales has a high level of leisure provision compared with other local authority areas.
- DDDC is supportive of WLP and believe that it has the potential to be maintained and developed as an important local facility.
- There is a good level of usage at the pool.
- In terms of direct income over expenditure WLP currently makes a modest profit.
- DDDC have identified that a significant amount of capital expenditure on WLP will be required in the foreseeable future. (This and the above point are covered in more detail in the Governance and Management section of this report.)
- The future of WLP needs to be seen in the context of current and future pressures on local authority budgets, and in the context of the changing role of local authorities (e.g. the move away from being providers of services to being commissioners of services). In many respects, moving WLP into community ownership could be seen as being part of this agenda.
- There was a general acknowledgement that DDDC would need to continue to play a significant part in the management and maintenance of WLP during any transition period where pool was moved into community ownership.

### **Anthony Gell Foundation**

A meeting was held with representatives of the Anthony Gell Foundation. The main points from this meeting were usefully summarised by the Foundation after the meeting. These were as follows:

'Our vision for the pool, shared at a member level/trustee meeting with the Dales, is that -

The pool should be maintained, sustained and promoted as a facility for the continuing benefit of the community and district, meeting a niche market for the particular benefit of young people, the elderly and disabled.

The most appropriate means of securing capital funding - circa £100,000 initially, but more to address inherent design and structural problems (e.g. the roof) should be investigated.

Secure information that shows how a non-district council led trust (if that is an appropriate option) can be achieved, and how it will create the additional funding capacity to enable the capital improvements to occur, should be obtained.

Good practice in facilities elsewhere in Derbyshire and beyond and appropriate advice about what could succeed in attracting funding working in partnership and with match funding should be investigated.

Management and staffing should continue to be delivered in a joined up way together with the Leisure Centre, rather than it become fragmented.

Dales colleagues were supportive of this vision in principle (albeit they were not prepared to give a commitment on the last point as much depends on the management arrangements adopted for Leisure services as a whole).

Because of our position as Trustees of the Anthony Gell Foundation we are not able to inject match funding capital into any funding bid as Anthony Gell School does not use the Pool and we are also not in a position to operate the Pool.'

### **Wirksworth Town Council**

A meeting was held with Wirksworth Town Council. The main points from this part of the consultation were as follows:

- The commonly held view that WLP is a valuable local facility that must be preserved was reiterated.
- There was a view that even in an expanded trust or in another form of governance arrangement, DDDC should still maintain ultimate responsibility.

### **Derbyshire County Council**

A meeting was held with Dawn Clarke, School Swimming Manager. Dawn's role is to manage the school swimming programme which is aimed at 7 – 11years olds. Consequently she doesn't use WLP because it is too small and has no first hand knowledge of the pool. 90% of Derbyshire's junior schools take part in the school swimming programme. She could see, however, that it was a good idea for little ones to learn to swim at an early stage – but would like to see ongoing swimming as well – something this facility can not offer to older children who are better swimmers. Dawn pointed out how expensive swimming is as part of the school curriculum both in cash terms and the amount of time it takes out of a school day. The travel and changing time often out-weigh the amount of time actually spent in the pool.

A meeting was held with Cllr Gary Purdy. Very much in favour of promoting swimming both as good exercise but also as a life skill and a way of young people being part of something – eg a swimming club. Young people who are involved in swimming clubs and have ambitions to swim competitively have to be very dedicated and train regularly, often giving up other social activities. This teaches self reliance and the lesson that what you get out of life relates to what you put in. Cllr Purdy is aware of the number of young people who first learn to swim at WLP and then go on to use other local facilities.

### **Local Schools**

Seven local schools regularly use WLP, these being Kirk Ireton Primary School, Cromford CoE Primary School, Wirksworth CoE Infant School, Carsington and Hopton Primary School, Wirksworth Infant School, Wirksworth Junior School and Crich Carr CoE Primary School. Representatives (usually the Head Teacher) from all of the schools were interviewed. The main points from this part of the consultation were as follows:

- All of those interviewed thought that the WLP was an excellent facility and were keen to see it continue.

- Being able to offer primary-school-age children weekly swimming as part of the school curriculum was seen as enormously beneficial for the children, both in terms of physical activity and also because it provided additional learning opportunities for the children. This age group of children is not part of DCC's normal swimming provision for schools.
- OFSTED respond very positively to swimming being provided for primary school age children.
- Primary school age children would not be taken to other facilities in the area if the WLP was not available. Other facilities, such as those at Matlock and Wirksworth are not seen as appropriate for children of that age. The size and warmth of the pool make it ideal for small children.
- Most of the schools responded positively to the idea of their becoming more involved in the management of the pool, for example by taking up a place on the board if trustees.

### **Wirksworth and District Community Sports Group**

- The commonly held view that WLP is a valuable local facility that must be preserved was reiterated.
- There was a view that even in an expanded trust or in another form of governance arrangement, DDDC should still maintain ultimate responsibility.
- It was thought appropriate that strong links should be maintained with the Leisure Centre in terms of administrative tasks such as bookings.
- There was interest in becoming more involved in the governance of the Trust through trusteeship or similar.

### **Derbyshire Primary Care Trust**

A discussion was held with a Public Health Specialist at Derbyshire Primary Care Trust regarding the PCT's likely level of support for WLP. The main points from the discussion were as follows:

- The PCT is in principle very supportive of the pool and would welcome moves to safeguard its future.
- The PCT recognises the value of swimming and other water based exercise as important in terms of public health as it offers 'low impact' cardio vascular exercise that improves basic fitness and is value in terms of rehabilitation.
- It is unlikely that the PCT would be able to offer a member of staff as a trustee of any expanded trust or charitable company, unless there is someone who has a personal interest in the project.
- It is unlikely that any significant funding would be available from the PCT. They have offered support to Hathersage Pool in the past, but have reservations about the long-term viability of community owned pools and would not be prepared to give them ongoing funding.

### **Residents of Wirksworth**

A public consultation event was held on Saturday 7<sup>th</sup> November between 10.00 am and 2.00 pm. The event was held to coincide with the regular farmers' market that takes place in Wirksworth in the hope that this would encourage people to participate the consultation event whilst attending the market. This proved to be a successful approach, and c130

people participated in the consultation. The feedback from the public encompassed a wide range of views and ideas. (A detailed write up of the feedback from this event is at Annex B.) However, there were a number of common themes that emerged. The main points from this part of the consultation were as follows:

- WLP is a much valued local facility and most of those responding thought that it should be maintained.
- A number of people commented on the quality of the instructors at the pool and were full of praise for their work.
- A small number of people thought that the facility should be improved radically (e.g. a larger modern pool built to replace the WLP.)
- There were a large number of comments about how the pool could be improved, and these tended to focus on changing facilities and access issues.
- A significant number of people commented that their children or grandchildren had learnt to swim at WLP.
- A significant number of people use the pool to help with disabilities, rehabilitation, physiotherapy etc., and it is popular with older people and families with small children.
- There was a clear link in the minds of many people with the other Leisure facilities in town, and with Anthony Gell School as a specialist sports college (a fact that several people made reference too. The maintaining of links with both of these organisations, but particularly with DDDC was seen as important by a significant number of people.
- There was a mixed response to the different models of governance that were given as examples at the event. Some people could see the value of setting up WLP as a non-profit making charity or 'Social Enterprise', and there was support for it remaining 'charitable' in some sense.
- However, following on from the point above, there were a significant number of respondents who felt that DDDC should maintain ultimate responsibility for the facility. Related to this was a not uncommon perception that because the pool was placed in trust, this meant that it was more-or-less sacrosanct, and no one had the power to dissolve the trust or close the pool.
- There was a common perception that DDDC was looking to either close the pool, or shrug off its responsibilities with regard to WLP. There was also a tendency to compare Wirksworth with other towns in the District, and ask why Wirksworth shouldn't have its own pool when Bakewell, Ashbourne and Matlock have.
- A significant number of people expressed an interest in getting more involved in the running of the pool through becoming a trustee or similar.

Overall, the event was a great success in terms of gauging public opinion and gaining some ideas for future developments and improvements at the pool, and exceeded the organisers' expectations in this respect.

Support for the pool was overwhelming from the majority of people who attended the event.

It is fair to say, looking objectively at the comments of people at the event, that there was a deep seated suspicion of DDDC's motives for carrying out the consultation, although much of this could probably be put down to the natural scepticism / cynicism that many people have towards the actions of local authorities and politicians generally. It is also fair to say that there was a widespread lack of understanding of the history of the pool and its current

management and governance arrangements, and the event perhaps served also to inform people of some of these things.

### **Private bookings:**

WLP is used by a small number of people who have regular private bookings at the pool. Representatives of all of these groups were spoken to. The main points from this part of the consultation were as follows:

- The level of usage from private bookings is quite low. There are three regular private bookings, and at the time of the consultation, this probably amounted to no more than 12 people using the pool in total.
- The bookings are long-standing (e.g. from 1988).
- The numbers of people involved in the groups has dwindled significantly in recent years, largely due to natural reductions in the numbers. It appeared that no real effort had been made by any of the three groups to boost numbers.
- All of the users are older people.
- All of the users valued the pool very much. If the WLP was not available, they would probably not go to other facilities in the area because of the travel and because the pool is private and unthreatening in nature.
- A number of those involved had learnt to swim at the pool in later life.
- The users were generally very satisfied with the facilities at the pool, although they all felt that the changing / washing facilities could be improved.
- None of those interviewed had any interest in getting involved in the future management of the pool (e.g. as a trustee).

### **Derbyshire Sport**

A discussion was held with Paul Chambers who is Business Development Manager including Facilities. The main points from this discussion were as follows:

- Derbyshire Sport are about to appoint their own swimming development officer to work alongside the County Amateur Swimming Association officer to implement the ASA plan. The focus of the plan is on development of swimming clubs and access to quality swimming coaching, rather than facilities. There is no specific focus on learning to swim at an early stage (as achieved at WLP) but rather encouraging people to learn to swim at all ages.
- Paul mentioned the Free Swimming Capital programme and the fact that DDDC had made a successful application for the Matlock pool but had not applied for anything for WLP because it did not meet the criteria of the fund. Was the funding for Matlock entirely used up? The Capital pot is now closed.
- In Paul's experience the only way to make a swimming financially sustainable is through cross subsidy.
- Swimming is being developed nationally as well as within Derbyshire – at present there is £1.5million going into building a new pool in Chesterfield.
- Derbyshire Sport Swimming Development officer may be someone to approach to sit on an expanded WLP trust.

## Amateur Swimming Association

Discussions were held with two local staff members of the Amateur Swimming Association

Kim Harwood is the ASA's County Swimming Co-ordinator. The focus of Kim's role is to enable people to access the free swimming offer for under 16 year olds and over 60's and also to improve opportunities for non and weak swimmer of any age to learn to swim. In this role she works closely with the staff at DDDC. Apparently one in five adults can't swim. Kim says there needs to be a change in attitude towards swimming. Adults who have perhaps had a bad experience at a public pool when younger need to be reassured that pools have changed. Also swimming programmes need to be adjusted to provide time for adult swimming classes. Adult swimming time tends to be predominantly lane swimming, which assumes all adults are confident swimmers. Also there are not enough swimming teachers available at times when adults want to learn to swim (e.g. after 6pm in the evening.)

Roger Glitheroe is the Regional Co-ordinator for the ASA and could therefore give a valuable overview of the situation regarding community owned swimming pools. The main points from the discussion were as follows:

- Most swimming pools operate with an annual deficit of approx £250K and only survive because of cross subsidy with other leisure facilities.
- Derbyshire Dales appears to be well provided for with pools at Matlock, Ashbourne and Bakewell, with Belper also available just outside the district.
- Sport England operates a 20 minute drive time as a reasonable distance to travel to swim.
- ASA would expect any development to look at how the provision sits within the District / County provision and an analysis of the target audience / user.
- There has been recent investment in swimming via the Free Swimming Capital Fund – which is now closed and there are no obvious other funders.
- Recently there has been a plethora of new Pool Trusts / Leisure Trusts established – often by District Council looking to outsource their leisure provision. WLP would be a very small trust.
- Running a pool is very costly – areas to look at are:
  - age of the plant,
  - pipework – has it been updated when boiler changed?
  - extraction – how well is it working?
  - changing facilities – do they meet modern expectations?
  - safety of tickets buying processes. Who checks you have paid/ and should be in the pool?
  - lifespan of the building?
  - Would ASA consider trusteeship of WLP? – probably not but happy to offer advice. ASA national facilities team could help with a development.

- ASA priorities at present are:
  - people learning to swim
  - development of swimming clubs
  - development of volunteering within clubs
  - workforce development – number of swimming tutors with the right skills, continuing professional development & safeguarding.
  - In terms of the WLP fitting in to the Derbyshire Aquatic Strategy, the following points were made:
    - workforce development – number of swimming tutors with the right skills, continuing professional development & safeguarding.
    - there is a lower % of non swimmers in the Dales
    - the pool is not able to cope with large number of swimmers.
    - it is quite deep for a learner pool. – the standard is 0.9 – 1.2 meters.
    - there is a danger of turning up and not being able to get in because of its size. – which causes customer dissatisfaction.
    - no community is going to agree to the closure of a pool – even if it is not needed.
    - key swimming times are 4-6pm and 6 – 8pm – is the pool open at those key times?

Some other general points were as follows:

- There is a swimming quality mark – Swim 21.
- 13% of the adult population go swimming once per month or more.
- Swimming is unique in that it is a life skill as well as an exercise. Only other sport that comes close is cycling. Being able to swim could save your life.
- There is a public expectation that they can access swimming pool.
- There is a growing trend of wild swimming – Lake Windermere for example hosts an annual Great Swim.
- ASA facilities team will carry out an independent review of the pool – a visual response.
- Other forms of pool heating are possible, it is possible to use biomass/solar power, as other pools have done.
- Also can use Ultra violet and reduce the amount of chlorine in pools.

### **Children's Centre**

A new Children's Centre is being established in Wirksworth. The person leading on this is Rosie Kightley, the District Manager for 0-11 Years. She was not aware of the WLP, but was interested in finding out more and will promote use of the pool. She suggested that the authors of the report talk to Umbrella. (See below.)

## **Umbrella**

Umbrella is a Charity that works with disabled children and their families and organises a playscheme. When the authors of the report approached them initially they were not aware of the pool, but went to view the facility at our suggestion to see if it is a facility they would use. They gave the following feedback:

- Overall, they thought the pool was very nice
- This is limited parking outside the pool, and if they were to walk from main car park the road maybe an issue, because of the challenging behavior our children display.
- The changing rooms seem to be the issue; a lot of the children that they support have challenging behavior and run, the door in the changing room has no lock or catch which could put parents off.
- the fact that there is no separate changing areas
- The toilets in the changing rooms are a good size although do want a little bit of tender loving care.
- It is wonderful that the pool already has a hoist, and some floatation equipment, especially for disabled people.
- The pool might be a little far away for some of our parents to travel to; but if the centre put on a good program of disabled-swimming sessions, parents may consider this.
- The actual pool itself is very nice; it is a good size; and it is nice that there is a slight graduation and a deeper end even though it is still shallow.
- They thought that it will be an ideal pool for the play scheme and will be talking to the centre manager very soon.

## **Hurst Farm Community Development Worker, Derbyshire Dales CVS**

One of DDCVS's own members of staff has recently started using WLP as a venue for work with local people. Caroline Stone organises activities for children and families from Hurst Farm Estate in Matlock as part of her Community Development remit. She has begun taking groups of children to visit the Leisure Centre and WLP. They use the climbing wall at the former, but also use the pool as part of the same trip. Feedback about the pool from Caroline was that:

- It is a good venue for activities with children. Caroline held a 'party in the pool' event that attracted 14 children. The children very much enjoyed their time in the pool and according to Caroline 'didn't want to get out' when the activity finished.
- The changing facilities are adequate and the showers were hot. However, she felt that the attractiveness of the pool could be enhanced by improved changing facilities and a better entrance to the pool.
- She thought that the pool is good value in terms of cost.

## **Hathersage Pool**

Informal discussions were held with representatives of Hathersage Parish Council about Hathersage Pool, which is perhaps the directly comparable facility in the Derbyshire Dales. There are some clear similarities and clear differences between the two facilities, but there are some interesting points from our discussions that are worth reporting.

- Hathersage Pool is owned and run by the Parish Council, although options such as making it the subject of a charitable trust are being explored. The main reason for this is to attract other sources of funding that are currently not accessible.
- Although the pool is well used, it is unlikely to remain viable without some degree of local authority support.
- Some paid staff are employed to run the pool, but much work is also done by volunteers which
- Hathersage Pool is out of doors, and therefore its season is limited, unlike WLP.
- Hathersage Pool is a large pool and therefore has a more mainstream client base than WLP.
- It is sited in a village that has a large number of tourist visits during the summer and is surrounded by other tourist attractions. It also has café attached to the pool which is very popular and open year round. Consequently it does not exist in isolation but benefits from being part of a wider tourist infrastructure.

## 4 Governance, Management and Finance

Wirksworth Learner Pool is the subject of a Charitable Trust (Registered Charity Number 503129). The Trust was created in 1974 in the circumstances described at Annex A. DDDC is now the sole trustee of the Charitable Trust. This is explored in greater detail in the section on legal structures below. The land on which the WLP stands is leased from the Anthony Gell Trust.

All aspects of the pool's management and operations are currently undertaken by the staff of Derbyshire Dales District Council.

### **Options analysis regarding the most appropriate legal structure for management of the facility in the future**

The first step in this analysis was to look at the current governance arrangements for the WLP and identify strengths and weaknesses with the current arrangement.

As mentioned earlier WLP is the subject of a charitable trust, of which DDDC is the only trustee. (A copy of the trust deed, which was obtained directly from the Charity Commission for the purposes of this review is attached at Annex C, as is a copy of the 'Scheme' relating to the leasing of land from the Anthony Gell Trust at Annex D) and also a copy of the lease itself at Annex E.)

The purpose of a Charitable Trust is, as with any kind of trust, to preserve a particular asset that is identified within the trust documents. It is useful to think of trusts as being merely a legal mechanism for preserving something. Trusts have trustees, and the role of the trustees is to ensure that the terms of the trust are adhered to. Trusts are almost by definition highly inflexible structures, and this can in itself sometime create difficulties.

Looking at the history of WLP, establishing a trust to administer the original sum of money committed to the WLP, and any subsequent donations to the fund, was an entirely reasonable step. However, one thing that was probably not envisaged was the possibility that one single local authority would become the sole trustee of the Trust. Aside from that, much has changed since 1974, and the context in which the trust exists has changed radically.

It is interesting to note that the Trust Deed identifies the beneficiaries of the Trust (and therefore of the pool) as 'young people, physically handicapped and others who by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances are in need...'. This is interesting because one might infer from this that the pool was not originally intended for general public use, but of course this kind of focus on particular interest groups would have been required to enable registration as a Charity.

The Trust Deed itself now seems very dated, both in terms of its general content and in style. When compared with a modern model charitable trust document (Annex F), its exact meaning can be difficult to follow. It is unlikely that such a document would now be acceptable to the Charity Commission if submitted as a new registration.

A local authority being the sole trustee of a charitable trust is by no means uncommon and in some circumstances is an entirely appropriate way of managing a particular asset. The Charity Commission in partnership with the Local Government Association has recently published guidance related to this: *Councillors' Guide to a council's role as charity trustee*, and has been attached to this report for information. (See Annex G.)

One clear message from the guidance is that that local authorities need to tread a careful path between their responsibilities as a trustee of a trust, and their wider responsibilities as providers of statutory and other services. The functions of the Council and the work of Trust needs to be demonstrably distinct and should not come into conflict. It would seem that DDDC has managed this situation well since it became Trustee of the WLP trust.

What are the advantages and disadvantages of the current Trust? These can be summarised as follows:

#### Advantages:

- The current Trust establishes the basic principle of the ongoing existence of WLP, and for the reasons outlined above, offers it some protection from the wider corporate objectives of DDDC and from the pressures on public spending that are likely over the next few years.
- Land has been leased to the Trust by Anthony Gell Trust on the understanding that it will be used for the purpose of building and maintaining WLP. This lends it some additional security as a facility.
- DDDC is well qualified to act as trustee because of a local authority's inherent need to demonstrate openness and transparency; be accountable for its actions and have high standards of public conduct.
- Although this doesn't relate directly to its responsibilities as a trustee of the trust, DDDC is able to service the pool to a high standard in terms of staffing, maintenance etc..

#### Disadvantages:

- As discussed above, balancing the needs of the Trust with the wider corporate priorities of DDDC is inherently difficult for DDDC as the Trustee, and this could lead to problems in the future, particularly when difficult decisions have to be made about spending.
- Although DDDC can claim to be representative of local communities through its elected members, its sole trusteeship of the trustee does not really give

the Trust board any kind of local, community input, and can therefore be seen as being unrepresentative of the community its serves.

- Although the Trust has charitable status, it would be difficult for it to access funding sources that are available to many charities because DDDC is the only trustee. Most funders would see the trust as just being an arm of DDDC and consequently see funding it as tantamount to funding a statutory body.
- Following on from the above point, it is difficult for the Trust in its current form to raise money in other ways, through donations or subscriptions for example, because most people would perceive that the money is actually going to the local authority.
- As mentioned above, trusts are not active, dynamic bodies and tend to be focused on preservation rather than development and expansion, and are not suited to delivering services, or to any kind of business or trading activity.
- Trusts do not have a membership, unlike ordinary registered charities.
- Trusts are not corporate bodies in their own right, and so cannot employ people, hold contracts etc., and do not offer any limited liability to the trustees.

Some of the above points could be addressed by adding new trustees to the Trust, so that in addition to DDDC, other agencies and individuals could be represented on the Board. These could be drawn from the 'stakeholders' mentioned earlier in the report. This would address the issue of the Trust being unrepresentative of the community, and might address some of the funding problems, although this would depend on the make up of the Board (e.g. if it was all statutory authorities, the same problem might still arise). It would also mean that DDDC was not solely responsible for the Trust and the WLP itself. Adding new trustees appears to be permissible under the terms of the Trust Deed, although the section relating to trusteeship in this document is very out of date, and could not now be implemented as written anyway. It is interesting to note however that the original intention of was to have a number of different trustees on the Trust rather than only one.

Clearly, just expanding the current trusteeship of the trust will not solve all the issues that surround WLP, but it might be considered a useful first step on the path to ensuring the pool's long-term viability.

At this stage in the report it is worth addressing two points that were made by a number of people during the consultation exercise, and that have been mentioned previously in the Stakeholder Consultation section.

Firstly, there is a common misconception that once something has been put in trust, then it is essentially in trust *ad infinitum* and that the trust can never be changed or dissolved. This is not the case. The trustees of any charitable trust ultimately have the option of changing the terms of the trust, or even dissolving the trust, if they can clearly demonstrate that this is the correct and most beneficial course of action. For example, if a sum of money had been placed in trust to benefit survivors of the Battle of the Somme, then there would have come a point when the whole *raison d'être* of the trust ceased to be relevant because there were no possible beneficiaries remaining alive. In such circumstances the trustees would have to take action. They could, for example, change the terms of the trust to make it more relevant, but still remain in the spirit of the original trust; or they could dissolve the trust and give its resources to a similar organisation with similar aims.

Secondly, a number of people expressed the opinion that, even if the Trust Board were expanded, or a different legal entity created, DDDC should still retain ultimate

responsibility for the Trust and the pool. This view is based on a fundamental lack of understanding of the concept of trusteeship in a Registered Charity. In a Registered Charity, *all trustees are equally responsible for the governance and management of the charity*. The idea that one Trustee could in some sense be more responsible than the others is wrong, and would not be acceptable in any way to the Charity Commission, as it implies that some trustees have decision making powers without having responsibility for the results of their decisions.

### **Other legal structures that might be considered**

Before looking at other legal structures that might provide a suitable vehicle for the future governance and management of WLP, it is worth making two initial points.

Firstly, it would be wrong to get too bogged down in discussing the relative merits of different forms of legal structure. The number of legal structures available is small and their characteristics and advantages and disadvantages are well documented. An organisation such as DDCVS that is experienced in advising people in the voluntary and community sector about this kind of matter can quickly identify a legal structure that will suit a particular group or project. Most organisations do not succeed or fail because of the legal structure they have chosen.

Secondly, it is important to recognise that the kind of legal structure that is most suitable for an organisation is very much determined by the 'business model' of the organisation. In other words it is the proposed activity that determines the most suitable structure, not the other way round. This might be an obvious point, but is worth making anyway.

The following legal structures could be suitable for the future governance of the WLP, depending on the business model to be followed. These are brief descriptions of what can be complex and varied organisations, but the aim is to highlight the main characteristics, particularly those that are relevant to the WLP situation.

### **Registered Charity**

The fundamental difference between a Registered Charity and a Charitable Trust is that a Registered Charity is focused on activity and delivering services, whereas, as we have outlined above, a Charitable Trust is essentially a mechanism for preserving an asset that has been placed in trust. Although a Charity can own assets, such as buildings, it can also liquidate those assets as long as this is clearly going to further the 'objects' of the Charity and is in its best interests. A Registered Charity is a much more flexible structure than a Charitable Trust.

An organisation seeking to become a Registered Charity demonstrate that its objects are charitable as defined by the Charity Commission, and also that its activities are of public benefit. The definition of what constitutes charitable objects was widened considerably in the Charities 2006, hence the additional need to demonstrate public benefit.

Registered Charities enjoy considerable financial benefits: they are exempt from direct taxation, can reclaim money on donations and subscriptions by Gift Aid and Deed of Covenant, are automatically exempt from 80% of Non-Domestic Rates, and can access sources of funding that other organisations cannot.

Charities can engage in 'trading', particularly what is known as 'primary purpose trading' (i.e. trading that is directly related to their objects). For example, a theatre registered as a

charity could charge for admission, sell programmes, charge for attendance at drama workshops and even run a café for the use of theatre goers. This would all be regarded as primary purpose trading, and there is no particular limit on how much of this a charity can do, and income from it is not taxable. Charities can also engage in some non-primary purpose trading. There are limits on how much of this a Charity can do, but the limits are fairly liberal. For example a charity with an annual income of £50,000 could derive up to £12,500 of this from non-primary purpose trading.

It is worth noting that a Registered Charity (and indeed a Charitable Trust) is not by definition a corporate body, and remains an 'unincorporated association' unless it also becomes incorporated.

### **Company Limited by Guarantee (or Shares)**

A Company Limited by Guarantee (or Shares) is the company structure that is adopted by most commercial businesses, and increasingly by Registered Charities. Company Registration, through Companies House, means that a legal entity is created that can legitimately enter into contracts, employ people, own or lease property etc., in its own right. It also offers limited liability to the directors/trustees of the organisation. Most larger charities are now CLGs.

The process for setting up a charitable company is fairly straightforward. Memorandum and Articles must first be submitted to Companies House. (Many charities use the model M&A supplied by the Charity Commission.) Once the Company has been set up by Companies House, the M&A are then submitted to the Charity Commission for registration of the Company as a Charity. Charitable companies are by definition non profit making (i.e. any surpluses are kept within the Company to further its charitable objects). The Board members of a Charitable Company are both Trustees of the Charity and Directors of the Company, and consequently are responsible both to Companies House and the Charity Commission.

### **Charitable Incorporated Organisation (CIO)**

The Charities Act 2006 created the possibility of a new form of charitable company known as a Charitable Incorporated Organisation. This would mean that a charitable company could be created by applying directly to the Charity Commission, and without having to register with Companies House. This legal structure is not yet available, but current Charity Commission guidance suggests that it could be implemented in 2010. It would essentially be the same kind of company structure described above, but without the dual regulation.

### **Community Interest Company (CIC)**

This is a relatively new legal structure, and was created as a vehicle for community businesses, social enterprises and other non-profit making enterprises. In many respects, the CIC is very similar to a normal Company Limited by Guarantee or Shares. There are however some important differences. The CIC has what is known as an asset lock. This means that the assets of the Company cannot be sold off for profit; any profit made from the disposal of assets would have to be ploughed back into the Company. (This is very much the same as in a Charitable Company.) CICs have their own regulator at Companies House, and to establish a CIC, it must pass a community interest test and be issued

with a certificate of community interest by the regulator. The CIC must also satisfy the regulator on an on-going basis that it continues to maintain its ethos of community benefit. Another significant characteristic of a CIC is that it cannot also be a Registered Charity. This is because their activities are not necessarily 'charitable' as defined by the Charity Commission, even though what they are doing is considered to have community ethos and they are non profit making. Consequently they do not enjoy the financial benefits afforded to Registered Charities. Unlike most Charitable Companies, the directors of a CIC could be employed by the Company or remunerated for their work. CICs are often seen as a modern alternative to co-operatives and Industrial and Provident Societies. (See below.)

## **Trading Companies**

Some registered charities set up what are know as trading companies (or trading arms). Trading companies are non profit making, and are set up independently of the charity. They can engage in any kind of trading activity, far beyond anything that could be done by a Registered Charity under charity law. Most or all of the surpluses from the trading company are paid to the parent charity to fund its charitable work. Trading companies are usually Companies Limited by Guarantee or Shares, or more recently CICs.

## **Industrial and Provident Societies**

An IPS is a trading organisation that operates as a co-operative, either for the benefit of its members or the wider community. IPS are 'exempt charities' which means they do not have to register with Charity Commission, but still enjoy the financial benefits of being a Charity. They are exempt from regulation and registration by the Charity Commission because it is considered that they are adequately regulated by another body. (In the case of IPS, this would be the Financial Services Authority.)

An IPS is usually funded by share capital, but the value of the shares never changes. Buying shares gives membership of the IPS and decisions are taken on a one-member-one-vote basis. As such, these are highly democratic organisations, although this also means that the decision making processes can be complex and potentially unwieldy and slow.

## **Main points and conclusions regarding legal structures**

- It is advisable – one might think essential – that any organisation running WLP has corporate status (i.e. is set up as a Company).
- Charitable status has obvious advantages, and exploring the option of creating a charitable company to run the pool would be a sound course of action.
- Whether being registered as a Charity would compromise the ability to trade and therefore undermine the sustainability of WLP would need exploring further. However, as discussed above, unless the Charity was likely to engage in a high level of non-primary purpose trading, this is unlikely to be an issue. This could only be judged once a business plan has been put in place that shows how WLP could be financed in the future.
- If the ability to trade was significantly compromised by charitable status, then a Community Interest Company would seem to be a viable alternative.
- An Industrial and Provident Society is an alternative to a CIC, but the complex decision making structure of the co-operative model is certainly a significant drawback.

- One option that should be given serious consideration is that of looking for an existing voluntary sector organisation or community business that might be able to take on the running of the pool. Obviously, finding a suitable and willing organisation might prove problematic, but it is at least worth considering.

Although carrying out financial analysis for WLP was not part of the agreement with DDDC / AGT, the authors decided that at least presenting a broad brush overview of the pool's finances would lend colour to the discussions about the options for the future.

WLP is run and maintained by DDDC staff, and its financial recording and accounting have been merged into those of Wirksworth Leisure Centre. The merging of financial information relating WLP with that of the Leisure Centre initially made it difficult to determine the financial situation of the pool, and it took DDDC officers a considerable time to produce stand alone figures.

When a full set of income and expenditure figures for the years 2007-2008, 2008-2009 and 2009-2010 (Attached at Annex H) were provided to the authors of this report they showed the following:

- Overall, the pool appears to make a significant loss year on year as shown below:

|              | 2007-2008 | 2008-2009 | 2009-2010 (To end Dec) |
|--------------|-----------|-----------|------------------------|
| Income:      | £42,734   | £48,934   | £53,153                |
| Expenditure: | £52,949   | £73,198*  | £69,073**              |
| Total:       | (£10,215) | (£24,264) | (£15,920)              |

\*Expenditure for 2008-2009 includes the cost of the purchase of a new boiler.

\*\* Income and expenditure figures for 2009-2010 are projected to the end of March 2010.

- Income has increased year on year, but has not kept pace with expenditure, and the view of the DDDC staff member who produced the figures was that income had not increased 'at the expected rate'. A significant loss seems likely for 2009-2010.
- Although the expenditure figures provided are detailed, there are some areas where apportioning costs to WLP has apparently proved difficult – for instance professional fees, back office functions, information technology and reprographics are not apportioned at all to the WLP's cost centre. One could infer from this that there might be hidden costs that are not apparent from the information currently available.

DDDC also provided provisional figures for capital expenditure that will be required on the pool (Attached at Annex I). The total for this was c £103,500. It was not apparent from the information provided over what time period this money would have to be spent, but presumably most if not all of this would have to be found within a fairly short time scale.

### Conclusions from financial information

- In spite of anecdotal evidence to the contrary, WLP makes a significant financial loss and a future strategy for maintaining the pool would have to address this.

Effective methods of increasing income and reducing costs would have to be found if the pool were to be sustainable in its own right.

- The large capital sum that would have to be found is an obvious barrier to the WLP being taken into community ownership, unless there is a clear strategy for bringing this money in. It is clear that the WLP is unlikely to be able to generate this kind of working capital in the short-term, and quite possibly not in the longer term either. Public or charitable / private money would have to be invested to meet these costs.
- Overall, the financial situation of WLP is not an attractive one to potential supporters, with significant losses being made every year and large capital expenditure required.

## 5. Community-Owned Swimming Pools – an overview

It is appropriate to reflect on the information in the section above in the context of other community-owned swimming pools in the UK. It has been useful to gain information from the Amateur Swimming Association about community-owned pools. Although they offer a lot of generalist advice about forming organisations, marketing etc., they also offer some very pertinent advice about the specific issues relating to pool ownership and maintenance. Below are some of the main points to consider.

- In terms of the providers of swimming facilities, a 'mixed market' of statutory, community and voluntary sector providers has developed significantly in recent years.
- It is now not uncommon for the owner of a pool to be different organisation from that which actually runs the pool. (e.g. a local authority might contract out the provision of swimming facilities, whilst maintaining ownership of the pool).
- Most community-owned swimming pools have been transferred from statutory control into community ownership. However, a significant number of new pools have been developed by community organisations.
- There has been a significant shift in pool service provision. In 2002-2003, 58% of local authorities serviced swimming pools 'in house'. By 2007-2008 this had reduced to 49%. It is likely that this trend will continue.
- In the 2008 White Paper, *Communities in Control, Real People, Real Power*, the Department for Communities and Local Government said that: 'We want to see an increase in the number of people helping to run or own local services and assets, and transfer more of these assets into community ownership.' Swimming pools are specifically mentioned as an example of this.
- Understanding the local authority's motivation for wishing to move the pool into community ownership is vital. Community enterprises need to ensure that they are not taking on an expensive 'white elephant', and that there is evidence that the community will continue to use it.
- If the local authority has undertaken a recent strategic asset review, the findings of this should be taken into account when considering community ownership of a pool.
- An independent condition survey of the pool site should be undertaken.
- Many existing pools have inherent design problems that have had a negative impact on their long term viability. It is important that such issues are identified from the outset.
- Financial and practical support from the local authority in the early years of the pool being taken over by a community enterprise is vital.
- Volunteering is a key part of make a community pool a success.

- Most pools are unable to survive as a stand alone enterprise – they are too expensive to run and don't bring in enough income. (The ASA estimates that even a small pool might well have running costs of £100,000 per annum.) A pool is more likely to be successful as part of a mix of attractions, such as part of a leisure centre, or being adjacent to shops, libraries, health centres, gyms etc..

The ASA identify the following as being key factors in making a community pool a success.

- A good volunteer base is identified from the early stages of the project;
- There is a clear and objectively evidenced need for the pool.
- Schools and clubs have shown a commitment to using the pool.
- There is a willingness to translate words into action on the part of the community.
- There is a tradition in the neighbourhood of participation in local events and enterprises.
- There is an identified sense of passion for a pool in the community.

Information from the ASA does demonstrate that community run swimming pools can work and it provides a number of useful case studies in its document *Guidance for Community Owned Swimming Pools*, including some relatively local ones (e.g. Nottingham and Sheffield). However it is clear that each case needs to be looked at on its own merits and whilst lessons can be learnt from other areas, it is important to stay focused on the local situation regarding WLP.

## 6. Discussion and Conclusions

The conclusions of this report are quite straightforward, but provide a good basis for future discussion.

Wirksworth Learner Pool is a much valued facility that local people feel should be preserved. There is strong support for the pool both from people of Wirksworth and agencies that work in the area.

Having said that, it should also be recognised that people are likely to resist the closure of any local facility, and if a question like 'should Wirksworth Learner Pool be kept open' were posed to the public, it is almost bound to be answered yes. People are unlikely to understand the financial pressures that a facility like WLP faces, and that the Local Authority is under. Also, they are unlikely to see a facility like WLP in the context of leisure provision across the District or in any kind of 'strategic' context. It was also obvious from the consultation that there was a sense in which the residents of Wirksworth felt that if Matlock, Bakewell and Ashbourne have a swimming pool, then why shouldn't they? This kind of instinctive and subject view of the situation will be very difficult to overcome. Any decision that is made that does not involve keeping the pool open is almost by definition going to be unpopular locally however good the case for closure is.

The pool is mostly used by people who are unlikely to use other mainstream facilities. Its small size and shallowness make it suitable for learners, older people, young children, disabled people and for 'pool parties' where swimming is not necessarily the main focus. One might infer from this that there is potential for the pool to be more actively marketed to the client groups described above. This kind of marketing strategy would have to be considered in any business plan that is put in place.

As discussed in more detail above, it would be easy to find an appropriate legal structure for WLP in the event of it becoming a social business, and the model that is most appropriate would become apparent once a business plan for the pool is put in place. It is, as noted above, important not to get bogged down in the legal structures issue. In many respects this is the easy bit. It is encouraging that a number of people and organisations have expressed an interest in becoming more involved with the governance of the pool, although whether this interest will be maintained when they understand what they would be undertaking remains to be seen.

Financial information provided by DDDC has shown that WLP loses a significant (though not huge) amount of money year-on-year. This and the amount of capital expenditure that is likely to be required in the near future is a - probably *the* - major obstacle to the pool being transferred into community ownership. One would have to be very enthusiastic indeed about the pool to consider taking on this kind of financial challenge, particularly in the current economic climate. It has to be said that there are still worrying grey areas in terms of finance: it is hard to judge, even from the figures provided, to what extent the pool is really subsidised by the Leisure Centre and ultimately by DDDC as a whole. Doubts have also been raised about the useful life of the building itself. A certain degree of capital investment is one thing; having to rebuild the whole facility is quite another. Prospective owners of the pool would have to satisfy themselves that they were not taking on the proverbial white elephant.

Having said that, it is possible to see a way forward that could keep the pool open, but this would require a number of factors to be in place, including a clear vision for how the facility could be maintained and developed; an entrepreneurial and dynamic approach to the management and marketing of the pool; ongoing support from DDDC in the short-to-medium term; and strong practical support from the local community in terms of actions rather than words.

## **7. Recommended Action Plan**

- DDDC and Anthony Gell Trust should jointly review the conclusions of this report with DDCVS and RAD, and decide if the idea of creating a community enterprise to run the pool is viable.
- Assuming that the answer to the above is yes, establish a Steering Group drawn from the stakeholders who have expressed an interest in becoming involved in WLP's management. DDCVS and RAD would have a role in facilitating this group.
- With the aid of the Steering Group, draw up a Business Plan for WLP based on the model of it being run as a Community Enterprise.
- Implement the Business Plan.

## **8. References**

*Guidance for Community Owned Swimming Pools.*

Amateur Swimming Association

## **9. Appendices**

Appendices A – I are attached.