

ARTS MANAGEMENT PROCUREMENT EXERCISE

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*Appendices 2, 3, 4 & 5 to Appendix B of this report are not for publication under Schedule 12A Part 4 paragraph 14 pursuant to Schedule 12A Part 5 paragraph 21 of the Local Government Act 1972 (as amended). It is viewed that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

**Purpose of the Report & Scope of Scrutiny**

1. To provide Members of the Economy and Culture Scrutiny Committee with the opportunity to scrutinise the proposals coming forward from the Arts Management Procurement Exercise prior to these being presented to Cabinet for approval on 16 February 2017. In particular the scrutiny should focus on:
  - The rationale behind the recommendation to terminate the competitive dialogue procurement process with immediate effect, in favour of an 'Enhanced In-House Model'.
  - The three phases involved in delivering the 'Enhanced In-House Model'.
2. At the Committee meeting Members will also have the opportunity to explore next steps and future actions to be taken to deliver the preferred option.

## Background

3. A report was taken to Cabinet on 15 May 2014 entitled '*Establishing a Programme of Organisational Change for the City of Cardiff Council*'.<sup>1</sup> This report set out the Cabinet's view that the Council needed to challenge the way in which services were currently being delivered, and that a full range of service delivery models and providers should be considered.
4. In line with this approach, the Council commissioned a report from Max Associates titled '*Sport, Leisure and Art Services Management Options Appraisal*'. This report was also taken to Cabinet on 15 May 2014.<sup>2</sup> The report examined three possible options for the future delivery of leisure centre services. These were:
  - i. Continuation of in-house operated services.
  - ii. The establishment of a local trust or trusts to operate leisure centres.
  - iii. Contracting with a private sector partner to operate leisure centres according to a defined specification.
5. The conclusion of the Max Associates report was that the formation of a partnership with an external organization scored highest in terms of the evaluation model used. At Cabinet on 15 May 2014 it was resolved that "*procurement processes be carried out for the future management of the Council's leisure centres and arts venues*". It was also stated within the associated Cabinet report that the Council's in-house provision would be used as a comparator to the services offered by bidders.
6. The Economy and Culture Scrutiny Committee undertook a Task and Finish Inquiry to consider the Max Associates report and the options available to the Council. The key findings of this work are summarized below:

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<sup>1</sup> Available via the following link: <http://goo.gl/Tl76wE>

<sup>2</sup> Available via the following link: <http://goo.gl/0z5i9B>

- On the basis of evidence considered it seemed clear that continuing to aim to deliver and manage in-house leisure and cultural services was likely to be an unsustainable position to take. Consequently, alternative management options needed to be progressed as a matter of urgency.
- In principle, an arrangement with a third party whose aims were based around social and community benefits and reinvestment of surpluses into positive social aims would be preferable to working with a third party whose business model was predicated on distributing surpluses to commercial shareholders.
- The clearer the Cabinet could be about its wants and needs the better the outcomes would be for our citizens.
- Rather than seeking to specify financial benefit as the exclusive priority and to seek the most financially advantageous arrangement – the Cabinet should seek to understand what minimum level of financial savings through an alternative management model would be deemed necessary to support the Council's medium term financial position. Based on this, Cabinet would be able to approach the market with confidence, knowing that any additional sums likely to result from partnership with a third party could be ring-fenced into the future wellbeing of the city's leisure and cultural assets.
- Committee was aware of the Cabinet Member's inherent philosophical preference for Council services to be delivered in-house. He was, however, clear in communicating that this personal view would not cloud or determine his judgement as the procurement exercise moved forward. Members encouraged the Cabinet Member to secure the best possible outcome for the citizens of Cardiff, skillfully balancing a range of equally important priorities.

The full Task and Finish report of the Committee, including more comprehensive findings, can be found attached at **Appendix A**.

## **Draft Cabinet Report**

7. The Draft Arts Management Procurement Cabinet Report to be considered at Cabinet on 16 February 2017 can be found attached at **Appendix B**.
8. **Paragraphs 14 – 18 of Appendix B** set out the details of the procurement process. In summary:
  - In December 2014, an OJEU Contract Notice, Memorandum of Information and a Pre-Qualifying Questionnaire were issued. Following an evaluation, seven organisations were invited to submit Outline Solutions (ISOS) and to proceed to the dialogue stage.
  - In April 2015, the ISOS was issued, dialogue sessions were held in May and submissions received in June. Following evaluation of submissions, four bidders were issued Invitation to Submit Detailed Solutions (ISDS) in August 2015.
  - ISDS responses were evaluated in October 2015, and one bidder was invited to continue dialogue. A Draft Final Submission had been received from the single remaining bidder and dialogue remains open.
9. Throughout this period, the Council's in-house provision has been developed as an internal comparator model to evaluate external bids against. This is known as the 'Enhanced In House Model'. This model sets out improvements that the Council itself could introduce, providing an internal benchmark to compare with proposals from bidders.
10. **Paragraphs 19 – 29 of Appendix B** outline the level of savings required, the capital investment needed at the venues, the need for internal modernisation and the level of control the Council wishes to retain.
11. **Confidential Appendix 4 of Appendix B** provides a summary of the Draft Final Submission for the external bidder and **Confidential Appendix 5** provides an

analysis of this bid against the Enhanced In-house Model. The Draft Cabinet report identifies that the external bid provides marginal additional revenue savings compared to the Enhanced In-house Model and proposes little direct Capital investment that an 'in-house approach' could not deliver.

12. Paragraph 27 of **Appendix B** states:

*“ [...] the revenue benefit and risk transfer offered by the bidder does not meet the Council’s aspiration and is not deemed sufficient to justify the transfer of control to the bidder and/or to commit contractually to providing an on-going level of subsidy over the 15 year term of the contract.”*

13. As such, it is proposed that the procurement process is terminated with immediate effect. This would limit the exposure of both the Council and bidder to further costs relating to the procurement exercise.

14. **Paragraphs 32 – 43 of Appendix B** identify the proposed next steps in relation to the Enhanced In-house Model, split into three sequential phases:

- Phase 1 – restructuring of staffing resources and improved income performance.
- Phase 2 - explore an alternative 'not for profit' vehicle such as a Charitable Trust.
- Phase 3 - explore a development-led investment proposition for the venues.

15. The following benefits are identified from the Council retaining full control of these venues:

- Potential to attract investment into the buildings to improve their capacity to generate new income streams
- Ability to retain discretion over the event programme and the wider community use of the venues

- Provide more security to staff and manage the restructure in a way that protects the interests of staff.
- Deliver the savings targeted in the Council's Medium Term Financial Plan.

16. The recommendations made to Cabinet based on the information within **Appendix B** are to:

- (1) Provide authority to abandon the Arts Management Competitive Dialogue procurement process;
- (2) Delegate authority to the Director of Economic Development, in consultation with the Cabinet Member Community Development, Co-operatives and Social Enterprise, the Cabinet Member Corporate Services and Performance, the Chief Executive, the Section 151 Officer and the Monitoring Officer to begin the process of implementing the 'Enhanced In-House Model' as outlined in this report;
- (3) Provide authority to explore the potential of a 'not for profit' vehicle and note that a separate report will be presented back to Cabinet.
- (4) Provide authority to prepare a modernisation plan for St David's Hall and New Theatre including consideration of development options and note that a separate report will be presented back to Cabinet.

17. The legal implications outlined in **Paragraphs 54 – 62 of Appendix B** set out the fact that it is lawful for a local authority to abandon such a procurement process and provides information on the implications of taking this action.

## **Previous Scrutiny**

**May 2014**

18. As mentioned in paragraph 6, the Economy and Culture Scrutiny Committee undertook the first phase of the *'Alternative Operating Models in Leisure and*

*Cultural Venues*' Inquiry in January to May 2014. The Inquiry Team provided some written thoughts for Committee Members to consider at their meeting on 8 May, as part of the pre-decision process. These were then tailored into a Scrutiny Report as part of a Cabinet paper seeking agreement for a process of procurement which Cabinet considered at their meeting on 15 May 2014. This report is attached as **Appendix A**.

## **November 2014**

19. The second phase of the 'Alternative Operating Models in Leisure and Cultural Venues' Inquiry was undertaken in November 2014. Members were updated on the procurement process and their views were sought by the Director of Sport, Leisure and Culture on the evaluation principles that were being written into the specifications of any contract award. At this meeting, Members were informed that the procurement process for Arts and Cultural Venues was proceeding less quickly than the process for Leisure Facilities. The decision was made to push ahead with the Leisure Facilities procurement rather than delay in order to allow them to run in tandem.

## **June 2015**

20. In June 2015, the Economy and Culture Scrutiny Committee considered the Economic Development Directorate Delivery Plan 2015 – 2017. This report contained the following Directorate Commitment: *"To secure £300k savings, (including the £300k target from 14/15 brought forward), through the conclusion of the procurement process for the Arts Venue Operator(s) and introduction of a new operating model by the end of Quarter 4."* It was anticipated that the contract award, transfer and mobilisation (if appropriate) would be completed within Q4 of the 2015/16 financial year.

21. Members wrote to the Cabinet Member – Community Development, Co-operatives & Social Enterprise to raise the following points:

- The procurement timetable left little flexibility, making it challenging to secure the levels of savings indicated within the financial year.
- Members were informed that the in-house provision had been driven to make efficiency savings and generate increased income, but that not much scope for further efficiencies or income remained. The Committee questioned what additional money an external provider would be able to secure, and whether the levels of savings applied to this project in the budget were attainable and realistic.

### **September 2015**

22. In September 2015, the Economy and Culture Scrutiny Committee considered Quarter 1 Performance 2012/5/16. This Performance report identified the progression of the Cultural Venues Procurement as a challenge, and indicated that timescales associated with this procurement would be reviewed to ensure benefits were realised as early as possible in 2016/17.

23. Members wrote to the Cabinet Member: Community Development, Co-operatives & Social Enterprise to raise the following points (it should be noted that these points were directed at the Leisure Procurement exercise, but also apply to the Arts Venues Procurement):

- Members of the Committee were particularly conscious that the process followed to develop an enhanced in-house model, to be compared against final submissions from the market, would be of great interest to bidders involved throughout the procurement process and were likely to subject to considerable external scrutiny. If following almost two years of work on the procurement process the Council decided to choose an enhanced in-house solution, the processes followed would need to be beyond reproach, particularly given the significant resources that will have been invested in the process by external companies.



- The Committee was aware that the clear driver behind this project was the need to deliver substantial savings, and to arrive at a position of nil cost to the Council from the provision of leisure services - savings which would need to be found whether an internal or external solution was agreed. If indeed the best way to achieve this was through an enhanced in-house offer, the Committee would support this course of action.

## **December 2015**

24. Members considered Quarter 2 Performance 2015/16 in December 2015, and again made comments with regard to the Leisure Procurement Exercise that can be applied to the Arts Procurement:

*“we acknowledge that there are additional risks and work required should the Council opt for an external supplier and understand that it may not be the in best interest of the Council to take this approach unless significant savings are going to be achieved in comparison to the enhanced in-house offer.”*

## **February 2016**

25. At the February 2016 Committee Meeting, Members considered the budget proposals for 2016/17. The proposals included savings associated with a review of costs, income and service delivery in Arts Venues. Following the Meeting the Committee wrote to Cabinet Member: Community Development, Co-operatives & Social Enterprise to state:

*“The Members of the Committee welcomed the clarifications you gave with regard to the £430,000 saving to be achieved through a review delivery in Arts Venues (namely St David’s Hall and the New Theatre). We were pleased to be informed that the future of these venues and the Arts Active programme are not under threat, but rather are subject to an ongoing procurement exercise to secure alternative management arrangements. At the meeting we were informed that these venues current receive a subsidy in the region of £2million, and the savings*

*identified here are a conservative estimate of the anticipated reduction in this subsidy.”*

## **March 2016**

26. In considering Quarter 3 Performance 2015/16 in March 2016, Members discussed the Arts and Cultural Procurement exercise and wrote the following to the Cabinet Member: Community Development, Co-operatives & Social Enterprise:

*“Members were concerned to be informed at the meeting that there is only a single bidder remaining in the Arts and Cultural Venues procurement exercise. We were given assurances by officers that the process has been competitive throughout, with competitive dialogue ongoing, and that the remaining bidder will be evaluated against the in-house provision in terms on delivering savings and consistent, if not improved, levels of service. Members, however, wish to note our concerns that that it will be hard for the Council to achieve the level of savings required from this exercise and look forward to scrutinising the proposed outcome in more depth in the coming months.”*

## **April 2016**

27. In April 2016, Members considered the Economic Development Directorate Delivery Plan 2016 - 2017, which contains the Key Aspiration to “Complete the Cultural ADM”. Following discussions at the meeting, Members wrote to the Cabinet Member: Community Development, Co-operatives & Social Enterprise, to state:

*“In discussing the 2016/17 savings for this Directorate, Members were informed that a substantial amount of the savings target is to be delivered through the Arts Venues Alternative Delivery Model procurement exercise. These are savings that were originally identified within the 2014/15 budget, and Members recognise the importance of their achievement. With this in mind we were pleased to be*

*informed that a decision from the procurement process is due in two months time. We look forward to the opportunity to scrutinise this decision prior to it being taken to Cabinet for approval”*

28. In reply, the Cabinet Member for Community Development, Co-operatives & Social Enterprise stated:

*“I understand that the Arts Venues Alternative Delivery Model procurement exercise is scheduled [to] be brought to Scrutiny in June, ahead of a report being taken to Cabinet in July. We can provide an overview of the process so far as well as providing an early opportunity to contribute, where appropriate, to the July Cabinet Report. As I am sure you will appreciate, this is a competitive procurement process. However I will seek to ensure that the Economy and Culture Scrutiny [Committee] can contribute appropriately.”*

### **Summer 2016**

29. The Arts Venues procurement exercise was not in a position to be brought to the Economy and Culture Scrutiny Committee during the Summer of 2016, and it was agreed to delay scrutiny consideration of the exercise until all information would be available for Member consideration.

### **Way Forward**

30. Councillor Peter Bradbury (Cabinet Member for Community Development, Co-operatives and Social Enterprise) has been invited to attend the meeting, as have Neil Hanratty (Director of Economic Development) and Roger Hopwood (Arts and Theatres Manager). At the meeting Members will have the opportunity to question the Cabinet Member and supporting officers on the proposals.
31. Trade Union representatives have been invited to provide oral or written contributions with regard to the Arts Management Procurement Exercise.

Members will have the opportunity to consider the views of the trade unions and ask questions of any representative attending the meeting.

## **Legal Implications**

32. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

## **Financial Implications**

33. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

## **RECOMMENDATION**

The Committee is recommended to:

- i. Note the contents of the attached reports;
- ii. Consider whether it wishes to make any comments to the Cabinet to take into consideration when it considers this subject.

### **Davina Fiore**

Director of Governance and Legal Services  
9 February 2017

## **Appendices**

**Appendix A:** Economy & Culture Scrutiny Committee – Task & Finish Report

**Appendix B:** Cabinet Report – Arts Management Procurement

**Appendix 1:** Arts Venue Procurement Information

The following appendices to this report are not for publication under Schedule 12A Part 4 paragraph 14 pursuant to Schedule 12A Part 5 paragraph 21 of the Local Government Act 1972 (as amended). It is viewed that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**Confidential Appendix 2:** Financial Summary

**Confidential Appendix 3:** Enhanced In-house Model

**Confidential Appendix 4:** Summary of Draft Final Tender

**Confidential Appendix 5:** Bid Comparison