

## ST DAVID'S HALL: PRE-DECISION SCRUTINY

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*Appendices 1 -7 of the Cabinet Report are not for publication as they contain exempt information of the description contained in paragraphs 14 and 16 of Part 4 of Schedule 12A of the Local Government Act 1972. 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

1. To provide background information to Members to aid their scrutiny of the draft report to Cabinet titled *St David's Hall*, which is due to be considered by Cabinet at their meeting on 15 December 2022.
2. Members should note that **Appendices 1-7** of the Cabinet report are exempt from publication. Members are requested to keep this information confidential, in line with their responsibilities as set out in the Members Code of Conduct.

### Scope of Scrutiny

3. At their meeting on 15 December 2022, the Cabinet will consider a report that sets out options for the future of St David's Hall. The report asks Cabinet to:
  - i. note an Outline Business Case,
  - ii. approve in principle Option 2 as set out in the report and delegate authority to prepare proposed contractual documentation
  - iii. note proposed public consultation and consultation with staff
  - iv. note consultation findings and assessment of best value will be brought back to Cabinet for consideration as part of a final decision on whether to proceed with the offer from AMG.
4. During this scrutiny, Members have the opportunity to explore:

- i. The Outline Business Case, including the three options for the future of St David's Hall
- ii. The information in Confidential Appendices 1-7, and Appendices 8 & 9
- iii. Details on Option 2 – including:
  - i. Output of St David's Hall – cultural and classical music programme, community arts education
  - ii. Staffing and TUPE
  - iii. Changes to St David's Hall
  - iv. Consultations undertaken to date
- iv. The proposed consultation with the public and with staff
- v. The financial, legal, property and HR implications
- vi. Whether there are any risks to the Council
- vii. The timeline and next steps
- viii. The recommendations to Cabinet.

### **Structure of the meeting**

5. The Chair will move that this item be considered in two parts: an open session, where Members will be able to ask questions on the issues and papers that are in the public domain; and a closed session, where members of the public will be excluded, where Members can ask questions that pertain to **Appendices 1-7**.
6. As the property aspect of this item falls within the terms of reference of the Policy Review and Performance Scrutiny Committee, Councillor Joel Williams, Chair - Policy Review and Performance Scrutiny Committee, has been invited to attend this meeting, by the Chair, to pose questions relating to that Committee's terms of reference.
7. Members will hear from Councillor Burke-Davies (Cabinet Member – Culture, Parks and Events), Neil Hanratty (Director of Economic Development), Kathryn Richards (Head of Culture, Venues, Tourism and Events), Ruth Cayford (Operational Manager –Creative Industries and Culture), Chris Barnett (OM Major Projects) and Donna Jones (Assistant Director – County Estates). There will be a

presentation taking Members through the proposals and recommendations to Cabinet, followed by Members' questions.

8. Members will then be able to decide what comments, observations or recommendations they wish to pass on to the Cabinet for their consideration prior to making their decisions

## **Background**

9. The draft report to Cabinet provides background information on St David's Hall, including:
  - i. recognised as being amongst the top ten of the world's best sounding concert hall
  - ii. is one of the UK's highest-ranking classical music venues
  - iii. hosts between 73-87 days per year for classical music
  - iv. hosts county music services, schools, youth and community orchestras, rock, pop, jazz, folk, comedy, spoken and lunchtime concerts and choirs, as well as tribute acts
  - v. venue for high profile events such as BBC Cardiff Singer of the World and International Concert Series
  - vi. hosts the Arts Active Trust, which facilitates and implements an outreach programme and engages with communities across Cardiff and beyond.
10. Cardiff Council's Corporate Plan 2022-25 and the administration's five-year strategy for Cardiff – Stronger, Fairer, Greener – both contain a commitment to ensure St David's Hall retains its position as a world- class auditorium.
11. The draft report to Cabinet entitled '*St David's Hall*' is attached at **Appendix A** and has **nine** appendices:
  - **Confidential Appendix 1** - Conditions Survey 2021
  - **Confidential Appendix 2** - Conditions Survey Cost Report
  - **Confidential Appendix 3** - Property Management Summary
  - **Confidential Appendix 4** - Outline Business Case
  - **Confidential Appendix 5** - AMG Proposal - Heads of Terms
  - **Confidential Appendix 6** - Legal Advice

- **Confidential Appendix 7** - Financial Overview
- **Appendix 8** – HR note
- **Appendix 9** - Equality Impact Assessment

## **Issues identified in the Cabinet Report**

12. St David's Hall is owned, operated and funded by Cardiff Council. The report to Cabinet sets out that the funding available for St David's Hall does not meet operating or maintenance costs, and that the situation is worsening:

- i. There is a budgeted operating subsidy of £688,700 per annum; **Point 21** highlights this is regularly exceeded, with subsidy levels £1m+.
- ii. **Point 17** sets out that the Council has only been able to afford to implement a basic maintenance programme to cover general wear and tear – circa £2m capital and circa £600k revenue - over the last ten years, due to the need to subsidise operating costs to ensure delivery of a classical music programme.
- iii. **Points 18 - 19** sets out that a 2021 Condition Survey identified several issues. Recent updated government guidance in relation to Reinforced Autoclaved Aerated Concrete (RAAC) planks, used in St David's Hall's roof, escalates the need for remedial works, with further information provided in **Confidential Appendices 1, 2 and 3**.

13. **Points 20-23** set out that the Council cannot afford the scale of capital investment required, that the costs of the operating subsidy are becoming increasingly difficult to meet due to growing pressures on Council services and finances, and that the Council has looked at alternative delivery measures over the last ten years, including an OJEU process in 2016 and work on an Outline Business Case in 2021.

## **Outline Business Case (OBC)**

14. **Point 23** states that, in December 2021 following an update on the condition of St David's Hall, Cabinet requested the development of an Outline Business Case (OBC) for St David's Hall.

15. **Point 25** sets out that the OBC work included:

- i. engagement to gauge current interest and determine if anything had changed since the OJEU public procurement in 2016
- ii. engagement with the main users of the venue to test the offer – engagement was positive and productive.

16. **Points 27- 28** states that the Council appointed specialist consultants to consider an OBC for the following:

- i. Option 1 – Council Retention – this would leave the building liability with the Council
- ii. Option 2 – AMG offer – this would take building liability off the Council
- iii. Option 3 – Market – engagement with the market indicates this would require building liability to remain with the Council

17. The OBC is attached as **Confidential Appendix 4**. The offer from AMG is considered the preferred option.

### **AMG Offer – Option 2**

18. **Point 24** states the Council received an unsolicited offer from AMG to take over operation of St David's Hall without subsidy and to take away all of the building's risks and liabilities from the Council. **Point 25** clarifies that this offer was made in time to be included in the OBC work outlined above.

19. **Point 24** states that the Council is considering the offer as a means of securing much needed investment into the building. It continues this has been done on the clear basis of a firm commitment from AMG to work to enhance the venue's reputation as the National Concert Hall of Wales by continuing to maintain and develop the classical music programme to protect the classical series, including the events delivered by the BBC National Orchestra of Wales, the orchestra of the Welsh National Opera, the Royal Welsh College of Music and Drama and the International Series. This would be alongside the introduction of AMG's Academy music venue.

20. **Points 29-30** provide more detail on the AMG offer, bullet pointing the main features of the offer and AMG's experience elsewhere in the UK. Additional details are in **Confidential Appendix 5**.

21. **Point 31** provides a high-level comparison of costs for Options 1 and 2:

- a. Option 1 - assumes Council capital investment into property repair and refurbishment in line with professional advice and continuation of the £688,700 annual budget subsidy over a 40-year period.
- b. Option 2 – AMG offer requiring no Council capital investment and no annual revenue subsidy. This option offers the Council an equivalent saving compared to Option 1 of £137m over a 40-year capital repayment programme (see Confidential Appendix 7 for details).

### **Market Considerations**

22. **Points 33 – 39** set out:

- i. 2016 OJEU process was not successful as did not identify commercial operator willing to take on building liabilities and eliminate operating subsidy for classical programme
- ii. AMG's offer meets the minimum requirements set by the Council in the 2016 OJEU process
- iii. The OBC engagement with the market demonstrated the market would still require the Council to retain building liability at the very least
- iv. AMG offer would provide AMG with an opportunity to secure a presence in the city centre following the closure of the Cardiff International Arena once the Indoor Arena is opened
- v. AMG offer would provide a venue to develop a pipeline of talent in the local market
- vi. The Council intends to publish a VEAT notice (Voluntary Ex-Ante Transparency Notice) to advise the market of the offer that has been made, to enable other suppliers to challenge the decision, if the Council is minded to proceed following public consultation.

23. **Financial Implications** are at **points 41-52**, and highlight:

- i. The proposal is aimed at removing the ongoing operating subsidy that the Council pays

- ii. The maintenance works required exceed available capital budgets
- iii. AMG's current offer requires no Council capital investment, no future liability, and no committed annual revenue payments
- iv. Any liabilities on the Council should be clearly identified and agreed as part of the final Heads of Terms for the lease – any commitments arising from this would need to be agreed and form part of future budget setting processes for both capital and revenue budgets
- v. TUPE and pension fund implications will need to be set out as part of the completion of the proposed lease
- vi. The timing of the transfer, staff consultation and lease agreement may impact achievability of budget savings for 2023/24
- vii. VAT implications are at **point 49** and include that, to recover any VAT arising from any potential Council contribution, the Council will need to exercise an option to tax over the whole site prior to any completion of the lease
- viii. Procurement and legal advice is in Confidential Appendix 6
- ix. It is recommended the Directorate seek further specialist advice to ensure the final contract sufficiently protects the Council's interests.

**24. Legal Implications** are at **points 53-72** and highlight:

- i. Confidential Appendix 6 contains procurement and legal advice, including subsidy control advice
- ii. It is recommended the Directorate seek further specialist legal advice as the Heads of Terms and ancillary documentation is finalised
- iii. The legal basis for disposal of Council-owned land
- iv. The legal basis for the Council to be involved in provision of entertainment
- v. The requirement to take account of the Council's fiduciary duties to local residents and taxpayers
- vi. The need for the decision maker to consider its duties with regard to the Equality Act 2010, the Public Sector Equality Duties, the Well- Being of Future Generations (Wales) Act 2015, and the Welsh Language (Wales) Measure 2011 and Welsh Language Standards

- vii. **Points 67 – 70** covers employment and sets out that Option 1 would essentially be 'as is', Option 2 has Heads of Terms that require TUPE to be applied to all staff transferring, and Option 3 requires a procurement process with the potential for TUPE to apply to transfer staff.
- viii. **Points 71-72** set out advice regarding pensions.

**25. Property Implications** are at **points 73-765** and highlight:

- i. The proposals in the report assist the Council to meet the targets in the Corporate Property Strategy 2021-26
- ii. Key Risks associated with the building are clearly identified in Confidential Appendices 1, 2 and 3
- iii. That the Council is put in an unsustainable risk management situation unless adequate finances and suitable remediation actions are implemented at the earliest possible situation, with regards to the RAAC planks

**26. HR Implications** are at **points 76-79**, and highlight:

- i. In addition to TUPE, the Welsh Government's Code of Practice on Workforce Matters must be met; this includes usually adhering to the principles of TUPE where these do not strictly apply, and staff, whether newly recruited or existing, will be on terms and conditions no less favourable than those of transferred staff, except for pensions where reasonable pension provision must be made.
- ii. Agency workers continuously engaged in the same role for a fixed number of hours per week for the last four years, and those that have been doing the same for 2 years, will be offered contracts of employment and will thereby be covered by TUPE legislation. AMG will determine future use of agency workers.
- iii. There is a commitment for further engagement with trade unions, staff and agency workers once a decision is taken by Cabinet; this includes a formal consultation period with staff on TUPE, if required.



## **Proposed Recommendations to Cabinet**

27. The report to Cabinet contains the following recommendations:

- I. *Note the Outline Business Case attached at Confidential Appendix 4.*
- II. *Approve, in principle the offer from AMG (set out as Option 2 in this report) and further described in the Outline Business Case at Confidential Appendix 4, the draft Heads of Terms at Confidential Appendix 5 and delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Culture, Parks and Events, the Section 151 Officer and the Legal Officer to progress negotiations with AMG and for Legal Services to prepare proposed contractual documentation.*
- III. *To note that consultation will be undertaken as follows:*
  - a. *Public consultation as part of the Council's budget setting process, and;*
  - b. *Consultation with affected staff in relation to a potential transfer to AMG under the Transfer of Undertaking (Protection of Employment Regulations 2006 ("TUPE").*
- IV. *To note that findings of the consultation, together with an assessment of best value of the AGM offer will be brought back to Cabinet for consideration as part of a final decision on whether to proceed with the offer from AMG.*

## **Previous Scrutiny**

28. This Committee undertook an in-depth inquiry into '*Alternative Operating Models for Leisure and Cultural Venues*' over 2014/16; this included New Theatre and St David's Hall. The Inquiry adopted a flexible approach to working, contributing to on-going policy development work and providing a critique to inform pre-decision scrutiny of this area.

29. In November 2018, this Committee undertook pre-decision scrutiny of a report to Cabinet titled '*Securing the Future of Cardiff's Heritage Buildings*', which included St David's Hall. Members noted further reports would be brought to Cabinet on detailed proposals as these arose and highlighted their wish to undertake pre-decision scrutiny of these reports.

30. In January 2020, this Committee agreed their Culture in Cardiff short scrutiny report, which is available to view here:

31. In December 2021, the Policy Review and Performance Scrutiny Committee undertook pre-decision scrutiny of the Corporate Property Strategy 2022-2026, including St David's Hall. The subsequent letter from the then Chair, Councillor Walker<sup>1</sup>, noted:

*'Members referred to the estimated cost of refurbishment of St. David's Hall. We note that, as the national concert hall of Wales, it is seen as a key component of the City's offer, but that a public/private partnership arrangement to ensure its preservation may need to be considered in the future. We note also that the future level of investment in the building's maintenance, estimated by the Council and presently its responsibility, would depend on negotiations with potential interested parties.'*

## Way Forward

32. Councillor Russell Goodway (Cabinet Member – Investment and Development) will be invited to make a statement. Neil Hanratty (Director of Economic Development), Kathryn Richards (Head of Culture, Venues, Tourism and Events), Ruth Cayford (Operational Manager – Creative Industries and Culture), and Donna Jones (Assistant Director – County Estates) will attend to give a presentation and all witnesses will be available to answer Members' questions.

33. All Members are reminded of the need to maintain confidentiality regarding the information provided in **Appendices 1-7**. Members will be invited to agree the meeting go into closed session to enable discussion of this information.

## Legal Implications

34. 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

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<sup>1</sup> Letter dated 15 December 2021, from Cllr Walker, Chair PRAP, to Cllr Goodway, Cabinet Member Investment and Development

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**

35. 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) Consider the information in this report, its appendices and the information presented at the meeting
- ii) Determine whether they would like to make any comments, observations or recommendations to the Cabinet on this matter in time for its meeting on 15 December 2022, and
- iii) Decide the way forward for any future scrutiny of the issues discussed.

**DAVINA FIORE**

**Director of Governance & Legal Services**

**06 December 2022**