

CABINET MEETING: 15 DECEMBER 2022

ST DAVID'S HALL

CULTURE, PARKS & EVENTS (COUNCILLOR JEN BURKE-DAVIES)

AGENDA ITEM:

PORTFOLIO: INVESTMENT & DEVELOPMENT

Appendices 1-7 of this report are not for publication as they contain exempt information of the description contained in paragraphs 14 and 16 of Part 4 of Schedule 12A of the Local Government Act 1972. In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Reason for this Report

1. To consider options for the future operation of St David's Hall following an offer made by Academy Music Group ("AMG") to secure investment in the building and to protect the long-term delivery of the classical music programme.

Background

2. St David's Hall opened in September 1982 as the National Concert Hall and Convention Centre for Wales. The building is located in the Hayes in Cardiff city centre and can accommodate 2,000 people in the main auditorium, making it the city's second biggest venue outside of sporting stadia, and the largest venue dedicated to the arts. The venue was established to deliver a wide range of events and performances, including symphonic orchestral performances in a purposely designed setting, rock and pop, comedy, dance and conferences.
3. The building is owned, operated and funded by Cardiff Council and was developed by Seymour Harris Partnership with contractors John Laing & Son to provide a superlative performing arts and conference venue befitting the capital city of Wales. To that end, significant effort was undertaken to ensure that the building was appropriate for international classical music performances, working with renowned acousticians Sandy Brown to create the perfect conditions for audiences to enjoy a full symphony orchestra. As a result of this work St David's Hall has become world renowned for the acoustic quality of the hall, recognised as being amongst the top ten of the world's best

sounding concert halls and one the UK's highest-ranking classical music venues.

4. The Council works with promoters and partners such as the BBC National Orchestra of Wales, Welsh National Opera and the Royal Welsh College of Music and Drama in developing a classical programme which has evolved over the past four decades. The venue also presents youth orchestras and community activities. St David's Hall has programmed world class artists as diverse as Andres Segovia, Rudolf Nureyev, Bryn Terfel, Rebecca Evans, Shirley Bassey, Dionne Warwick, Tom Jones, Blondie, U2, Metallica, Manic Street Preachers and Little Simz to perform since its inception.
5. The venue continues to deliver a wide range of events, complimenting existing and new venues across the city such as the Wales Millennium Centre. This includes high profile events such as the BBC Cardiff Singer of the World competition, which is due to celebrate its 40th anniversary, the world class International Concert Series, and the Welsh Proms. The BBC National Orchestra of Wales has been the resident symphony orchestra for the venue since its opening and regularly broadcasts live on BBC Radio 3. As such the auditorium is an integral part of the city's cultural landscape.

Current Usage

6. The classical music programme consists of approximately 70 days including get-in set-up, get-out and rehearsal days. The main series consists of 16-18 concerts including 7 concerts delivered by the BBC National Orchestra of Wales; 2 by the orchestra of the Wales National Opera; and 7 concerts from traveling orchestras that make up the "International Series". This is supplemented by a range of additional classical performances and community events, including the Welsh Proms, performances by the National Youth Orchestra of Wales, Cardiff Philharmonic, the Royal Welsh College of Music and Drama, Cardiff University and numerous county music services and schools, youth and community orchestras and the Wales Festival of Remembrance. In addition, the Arts Active Trust utilises 3 days each year for performances in the main auditorium taking the total to 73 days. Bi-annually the Cardiff Singer of the World competition requires an additional 14 days, taking the total to 87 days (from 73 days) every other year.
7. The funding model for classical performances varies, for example, the BBC National Orchestra of Wales pays a hire fee for the hall retaining ticket income whilst Welsh National Opera perform for a box office split. The seven international orchestras booked by St David's Hall for the International Series range from top UK orchestras to renowned European orchestras. These orchestras often require a large upfront financial guarantee, ranging from £25,000 to £42,000 per single performance with the Council taking a risk on recouping these costs through retaining a proportion of ticket sales.
8. St David's Hall also hosts rock, pop, jazz, folk, comedy, lunchtime concerts and choir performance to generate income to offset against the costs of the classical and community programmes. As part of this, St David's Hall also often programmes tribute acts and even though these are often popular and well

attended, the public regularly comments that they wish more current and high-profile music acts would perform more regularly at St David's Hall.

9. Overall, in 2019-20 there were 310 performances and there will be a similar number this year.

Arts Active Trust

10. The Arts Active Trust is a registered independent charity operating out of St David's Hall. The Trust aims to attract funding from external sources such as the Arts Council for Wales to facilitate and implement an outreach programme to promote the activities of St David's Hall, the New Theatre and other partners, to engage with communities in Cardiff and beyond; to encourage interest in and appreciation of music, performing arts and multidisciplinary arts projects through participation, education and audience development. The work of the Trust is carried out by three full time staff employed by St David's Hall.
11. In the current financial year, Arts Active Trust has secured c£300k of funding from various sources for their outreach work in support of the classical programme. This sum includes funding from the Arts Council of Wales from a National Lottery programme which is applied for each year (normally circa £99k per annum). In 2022/23, around 40% of this Arts Council funding was allocated towards the direct up-front costs of attracting international orchestras, and 60% supported engagement and outreach activities connected to the classical series, such as pre-concert talks, young composers scheme, schools' composition projects and podcasts.
12. The Arts Active Trust use 3 days for performances/events in the main auditorium, supplemented by an extensive programme on Level 1 and other areas for the Gamelan, Soundworks, workshops, performances and events.

Council Policy

13. St David's Hall plays a significant role in the city's wider economic and cultural agenda, notably as part of Cardiff's Music City ambitions. Subsequently, the Council's Corporate Plan 2022-25 includes a commitment to "*considering development and investment opportunities for St David's Hall to retain its position as a world-class auditorium.*" This is in response to a recommendation from the 'Sound Diplomacy' report to "*ensure St David's Hall maintains its reputation as a world-class concert venue*".
14. Stronger, Fairer, Greener - the administration's five-year strategy for Cardiff - also includes a commitment to "*ensure St David's Hall retains its position as a world-class auditorium*".
15. In 2019, prior to the pandemic, Cabinet considered the *Securing the Future of Cardiff's Heritage Buildings* report, that outlined the Council's need to secure a future for the city's most important heritage and cultural assets, including St David's Hall. The report indicated that due to impending significant maintenance liabilities and high operating costs, the Council faced increasing capital and revenue implications relating to the continued operation of St David's Hall. The report also outlined that significant investment is required to

ensure St David's Hall remained safe to use and of sufficient quality to adequately meet service requirements. The Heritage Buildings report subsequently provided authority for officers to develop a modernisation proposal and to present options back to Cabinet.

Issues

16. Whilst St David's Hall remains a renowned classical music venue, it is slowly falling into a state of disrepair which threatens to undermine its reputation and on-going operation. The lack of national funding to support the venue has meant the burden of responsibility for maintaining the building and delivering the classical programme has fallen on the Council. The Arts Council of Wales withdrew the venue's *Revenue Funded Organization* status in 2014 which provided c£65k per annum over approved 5-year periods. Although the scale of this contribution was relatively modest, it did nonetheless represent a gesture of support for a facility of 'national' significance. The Arts Council for Wales does still provide ad-hoc funding towards the classical series of £99k per annum, through Arts Active, however this funding is required to be applied for each year.
17. Despite the Council's sustained and significant financial contribution towards the venue (over an extended period of 40 years) the operational budget has not been sufficient to both protect the delivery of the classical programme and to release investment to maintain and modernize the building. The Council has only been able to afford to implement a basic maintenance programme to cover general wear and tear amounting to circa £2m of capital and circa £600k of revenue over the last 10 years. This has become increasingly insufficient as the building has grown older.
18. In 2021, the Council procured a detailed condition survey of St David's Hall following the identification of several issues, primarily with the roof. The condition survey sets out a detailed schedule of priority works relating to the fabric of the building and the mechanical and electrical equipment together with associated indicative costs of repair. The condition survey was presented to Cabinet in December 2021 as part of the Corporate Property Strategy 2021-26 and is attached at Confidential Appendix 1, supported by a cost report at Confidential Appendix 2. As Cabinet will note, the cost of essential works, consequential improvements, addressing the maintenance backlog and the general modernisation of the building has an overall financial implication which stretches into the tens of millions. These costs are likely to have increased since the condition survey was drafted in 2021 due to inflationary pressures.
19. Health and safety requirements associated with these priority works has escalated over recent months. The condition survey uncovered that the ceiling at St David's Hall is formed of Reinforced Autoclaved Aerated Concrete (RAAC) planks. This led the Council to implement a building management and health and safety strategy (set out at Confidential Appendix 3) based on professional advice and government bulletins, to ensure St David's Hall could continue to operate safely over the short term. However, in recent months government guidance on the risk associated with RAAC planks has been updated and has escalated the need for remedial works as set out in Confidential Appendix 3. The current management approach can only

reasonably be continued over the short term as a stop gap to permanent remediation.

20. The scale of capital investment required to address both the short-term repairs, the longer-term maintenance backlog, and general modernisation to ensure a good quality provision consistent with industry standards, is not available from within existing Council resources and any borrowing to fund the works would have a significant additional revenue implication on the Council at a time when many services are facing significant cuts.
21. The allocated revenue subsidy from the Council for St David's Hall is £688,700 in the current year. However, the venue regularly achieves lower box office revenue than forecast and as such the actual level of Council financial support regularly exceeds £1m per annum. The unallocated budget spend is required to be absorbed within wider directorate budgets and each year this is becoming increasingly difficult to achieve due to the growing pressure on Council budgets. This problem will be magnified significantly in the next financial year as the Council is forecasting a revenue budget shortfall of circa £53m.
22. For nearly a decade, since the onset of public sector austerity, the Council has been keen to identify ways to reduce the burden of St David's Hall on the public purse. In 2016, the Council undertook a full OJEU Competitive Dialogue public procurement process to identify an external operator for both St David's Hall and the New Theatre, which at the time were managed as one combined entity. Although the process generated interest from the market, it was clear that the interest was contingent on the Council retaining full responsibility for the maintenance of St David's Hall. There was strong interest in the New Theatre as a separate going concern and in 2019 the Council separated the operation of the two venues and proceeded with a strategy which secured an external operator for the New Theatre only, through a property lease.
23. The level of subsidy of the classical programme has had a consequential knock-on effect on the level of investment the Council has been able to make towards the maintenance and modernisation of the building. As the building has grown older, the maintenance backlog has grown more significant, with the Council only able to support general day to day repairs. In December 2021, following the update to Cabinet on the condition of the building, Cabinet requested the development of an Outline Business Case for St David's Hall that would consider the options for dealing with the implications of the condition survey and seek to remove or at least reduce the operational subsidy. The Outline Business Case is attached at Confidential Appendix 4.
24. The Council has received an unsolicited offer from AMG to take over the operation of St David's Hall without subsidy and to take away all of the building's risks and liabilities from the Council. The details of AMG's offer are set out later in this report. Given the emerging pressure on resources, and the growing Health and Safety requirements for the venue, the Council has considered the offer as a means of securing much needed investment into the building. The Council's consideration of the offer has been 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 (alongside the introduction of their Academy music venue) by continuing to maintain and develop the classical

music programme, Their proposal would 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.

25. The timing of AMG's offer enabled external consultants to consider the proposition as part of an Outline Business Case. The work involved engagement with external parties in 2022 to gauge current market interest and in particular to determine if anything fundamental had changed since the public procurement process undertaken in 2016. The consultants also engaged with the main users of the venue to test the offer from AMG, to ensure that adequate provisions had been made to protect the classical programme. Engagement with these organisations was positive and productive.

Outline Business Case

26. Whilst the Council has been open to consideration of alternative operating models for St David's Hall since 2014, it has always been centered around a number of minimum requirements. Firstly, the Council has always wanted to retain the freehold ownership of the property and would only consider leasehold arrangements. The Council has been open to interest from parties prepared to protect the classical and community programme, ideally without any subsidy being provided by the Council, and at the same time securing an arrangement which would result in a commitment to investing in the building and taking the building liability away from the Council. The public procurement process undertaken in 2016 did not identify a party that matched the Council's aspirations or key requirements. Bidders required the building liabilities to remain with the Council. Since then, the building has deteriorated further as it has grown older, and the pandemic has made the business model even more difficult to succeed. Despite this, the Council has received an unsolicited offer from AMG setting out a proposal to continue to operate St David's Hall by way of a property lease. The offer includes taking full responsibility for the liability of the building, protecting the classical and community programme, protecting the acoustic value of the auditorium and securing existing jobs. The offer is attached as part of Confidential Appendix 4 and is detailed at Confidential Appendix 5.
27. The Council has appointed specialist consultants to consider an Outline Business Case based on the following options:
 - a. Option 1 (Council Retained) – consider whether there are opportunities through a continued in-house operational model to mitigate the current operational subsidy and to address the immediate health and safety risks and the longer-term maintenance backlog and modernisation investment required.
 - b. Option 2 (AMG Offer) – consider the value and benefit of the offer made by AMG.
 - c. Option 3 (The Market) – consider the appropriateness and viability of undertaking a public procurement exercise to establish whether the wider market would be able to provide improved value.

28. The Outline Business Case is attached at Confidential Appendix 4. The offer from AMG is considered the preferred option. The option for the Council to retain the building would leave the building liability with the Council and would still require an on-going revenue subsidy, albeit this could potentially be reduced over time. The market engagement work in 2022 (relating to Option 3) confirmed that little had changed since the public procurement process undertaken in 2016 meaning that the building liability would need to remain with the Council, and that the offer from AMG was based on a unique set of circumstances and was unlikely to be matched.

The AMG Offer (Option 2)

29. The AMG offer is set out in detail at Confidential Appendix 5. The offer includes:

- A commitment to take on full responsibility for the building, taking the liability away from the Council and removing the need for the Council to provide any ongoing subsidy towards the up-keep and operation of the building.
- Allowing AMG, as tenant, to operate the venue as an independent commercial enterprise. This would allow AMG to have discretion over programming and ticket, including the pricing of classical events where AMG provides an up-front guarantee to attract travelling orchestras.
- A commitment to fully retain and provide a long-term future to the National Concert Hall of Wales whilst optimising the overall event calendar, including:
 - A commitment to allocate a minimum of 60 days within the peak event calendar to accommodate key classical events. These dates would be secured annually in the event calendar over the full term of the lease. The 60 days offer is not intended to limit the number of days, but rather is a commitment to set aside an appropriate number of high quality (peak-time) days to the classical programme that can be committed to up to 12 months in advance (or earlier as required).
 - A commitment to accommodate the remainder of the classical and community programme around the commercial event calendar including in the peak period if dates are available up to 3 months in advance. Where possible these events would be accommodated on days when the venue is already scheduled to be opened for an event. Where this is not possible and the venue is required to open specifically for an event when it would otherwise be closed, a 'community rate' would be chargeable, equivalent to the cost of operating the venue. Most events, including community events, are already subject to fees from St David's Hall. The community rate card would be agreed by the Council prior to completion of any lease.
 - A commitment to continue to work with the Arts Active Trust by providing continued access to the venue. The St David's Hall staff currently

employed to deliver the Arts Active programme will remain employed by the Council.

- A commitment to continue to utilise the expertise of an independent classical music programme advisor;
- A commitment to maintain the venue's key musical instruments including the 5 Steinway pianos and the St David's Hall organ;
- A commitment to enter into a User Agreement with the key classical and community stakeholders to develop an optimum classical and community programme, with the Council providing a dispute resolution role.
- A commitment to employing existing Council staff on existing terms and conditions through a TUPE agreement and in full compliance with the Code of Practice;
- A commitment to invest in a series of repairs to address the current Health & Safety requirements to ensure the building can be kept open for use.
- In addition, AMG has outlined to the Council investment plans for the building, which include:
 - Investment in the communal areas of the building (foyers / bars etc.) to modernise the building.
 - Investment in the stage area to enable more flexible and up to date use.
 - Investment in the main auditorium to improve the experiential offer including a range of cosmetic improvements such as new seat coverings, flooring etc without affecting the integrity of the auditorium and/or its acoustic quality.
 - Investment in the lower stalls area to allow for the installation of removable seating to enable standing for a wide range of music events. This proposal has been tested and approved by the original acoustic engineers Sandy Brown to confirm no noticeable impact on acoustic quality.
 - A commitment to utilising an independent acoustic engineer (to be approved by the Council) to review any modifications that could affect the acoustic quality of the auditorium before proceeding with works.
 - Delivering the AMG Academy music product to Cardiff bringing a significant number of high-quality rock and pop music events to Cardiff each year. This will provide the residents of Cardiff and the wider region with access to up-and-coming rock and pop artists which at present they need to travel to the nearest Academy venues in Bristol, London or Birmingham to experience.

30. AMG operates 21 venues across the UK and this includes a track record of operating important heritage buildings, including the Shepherds Bush Empire, the Leeds Coliseum (a Grade I listed gothic-style building opened as the Coliseum concert hall in 1885) and City Hall Newcastle, amongst others. AMG also has experience of managing venues such as the O2 Guildhall Southampton that provide a varied calendar including a significant programme of classical and community events.
31. A high-level comparison of the cost to the Council for both Option 1 and Option 2 are set out in Confidential Appendix 7 and can be summarized as follows:
 - 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 £133m over a 40-year capital repayment programme (see Confidential Appendix 7 for details).
32. This report recommends proceeding with Option 2 as the most sustainable and affordable solution to protect St David’s Hall, its classical programme, and the venue’s staff.

Market Considerations

33. In 2016, the Council undertook a full OJEU public procurement process to seek an operator for both St David’s Hall and the New Theatre. The procurement involved an extensive Competitive Dialogue process which lasted 18 months to complete at significant cost to the Council. The process was not successful in securing a suitable outcome for either venue. In terms of St David’s Hall, the Council was unable to secure a commitment from a commercial operator to invest the necessary resources to improve the fabric of the building whilst at the same time eliminating or significantly reducing the subsidy from the Council for the continuation of the classical programme. (A position that has been reconfirmed in recent work on the Outline Business Case).
34. Following the feedback received through the Competitive Dialogue process, in 2019, the Council took the New Theatre back out to the market, in isolation from St David’s Hall, and secured an external operator through a property lease rather than a service contract.
35. In 2021, the Council received an unsolicited offer from AMG to operate St David’s Hall without subsidy, whilst protecting the classical programme and accepting full responsibility for the liability of the building and its on-going maintenance. AMG’s offer therefore meets the Council’s minimum requirements when it took the opportunity to the market in 2016, that is, eliminating the operating subsidy, protecting the classical programme, and committing to remove the building liabilities from the Council.

36. The Council's appointed consultants undertook an element of market testing as part of their work to develop the Outline Business Case. The focus of this work was to determine if the market's appetite for operating the building without subsidy and taking on full responsibility for the building had changed since 2016. They confirmed that any transfer would still require the Council to retain responsibility for the building at the very least.
37. The AMG offer is different and is based on a unique set of circumstances. The proposal would provide AMG with an opportunity to secure a presence in Cardiff city centre in advance of the closure of the Cardiff International Arena that is scheduled to close once the new Indoor Arena is delivered in Cardiff Bay. It would also provide a smaller venue to develop a pipeline of talent in the local marketplace that can be showcased in the new Indoor Arena in the future.
38. If, following the public consultation exercise that will be undertaken as part of the Council's budget setting process, the Council is minded to proceed with AMG's offer, the Council intends to publish a Voluntary Ex-Ante Transparency Notice ("VEAT Notice"). The purpose of the VEAT Notice is to provide transparency to the market of the intention to enter into the proposed contractual arrangements on the basis that it is a land transaction which is exempt from the procurement rules. In doing so the Council will observe a standstill period prior to entering into the contractual arrangements with AMG.
39. Legal advice regarding the proposed transaction is set out at Confidential Appendix 6.

Reasons for Recommendation

40. To establish a sustainable long-term future for the National Concert Hall of Wales and to protect the delivery of the classical music programme.

Financial Implications - DRAFT

1. The report recommends approval in principle for the Council to enter into a long-term property lease with AMG as tenant for the operation of St David's Hall and as an independent commercial enterprise. Any final decision would be subject to the public consultation process to be undertaken as part of the Council's budget setting process for 2023/24 and the proposed publication of a VEAT notice.
2. It is proposed that a further report be brought to a future meeting of Cabinet for consideration and approval of a final lease agreement. The proposal will be subject to completion of the detailed Heads of Terms to include final detail of the transfer of building liabilities and the transfer of relevant staff under TUPE regulations.
3. Subject to the final detail, the proposal is aimed at the removal of the ongoing operating subsidy to the Council with a current annual revenue budget set at £688,700.

4. A detailed condition survey carried out in 2021 is noted to have identified several significant issues relating to the fabric of the building with the value of these works exceeding available capital budgets. The report additionally notes that temporary building management and health and safety strategies in place are only suitable for the short term and in advance of permanent remediation.
5. The offer from AMG as it is currently drafted would require no Council capital investment, no future buildings liability, and no committed annual revenue payments or subsidy to the new tenant. The draft offer also provides for the continuation of the classical programme requiring no on-going contribution from the Council.
6. Whilst there are no works specified for the Council to undertake prior to any transfer at this stage, any liabilities on the Council should be clearly identified and agreed as part of the final Heads of Terms for the lease. Any commitments in this regard would need to be agreed and form part of future budget setting processes for both capital and revenue budgets.
7. The recommendation assumes the transfer of all staff associated with St David's Hall under TUPE regulations. This and any Pension Fund implications in relation to any transfer of responsibilities will need to be fully set out as part of the completion of the proposed lease.
8. The timing of the transfer, staff consultation and exact detail of the lease agreement may also have an impact on the achievability of budget savings for 2023/24 and any ongoing liabilities for the Council and will need to be reviewed accordingly as part of the finalisation of the contractual terms.
9. Initial VAT advice received by the Council on the status of the lease suggests that any potential future Council contribution may be subject to VAT. Therefore, in such an arrangement and in order for the Council to recover this VAT, the Council will need to exercise an option to tax over the whole site prior to any completion of the lease, in order that any interests in land granted are taxable rather than exempt supplies. In principle, this would allow for VAT recovery on any costs directly associated with these interests. Similarly, the Council has included a clause that the operator cannot dis-apply the option to tax in relation to the Land and will not do, or cause to be done, or omit to do anything which could lead to the option to tax being revoked or dis-applied by operation of law or otherwise.
10. Procurement and legal advice with regard to the draft Heads of Terms are set out in Confidential Appendix 6. Prior to agreeing the recommendations within this report and prior to the finalisation of any lease agreement, decision makers should ensure that they are satisfied with the findings in this regard.
11. The Subsidy Control Act 2022 comes into force in January 2023 and prior to finalisation of any contractual documentation, the Council must determine the requirements of this Act and ensure that any transactions proposed to be entered into are fully compliant.

12. Further consideration must be given to the legal, procurement and VAT implications of the report proposals as the Heads of Terms and ancillary documentation are finalised. It is recommended therefore that the Directorate seek further specialist advice in these areas as appropriate in order to ensure that the structure of any final contract sufficiently protects the Council's interests.

Legal Implications

13. Procurement and legal advice with regard to the draft Heads of Terms are set out in Confidential Appendix 6 and prior to agreeing the recommendations within this report, decision makers should ensure that they are satisfied with the findings in this regard.
14. Further consideration should be given to any legal, procurement and VAT implications of the report proposals as the Heads of Terms and ancillary documentation is finalised. It is recommended that the Directorate seek further specialist advice in these areas as appropriate in order to ensure that the structure of any final contract sufficiently protects the Council.
15. Section 123 of the Local Government Act 1972 enables the Council to dispose of land "in any manner they wish", provided that best consideration is obtained, for any interest for a term exceeding 7 years (or an assignment which still has more than 7 years to run). Disposals of land for more than 7 years for less than best consideration require the consent of the Secretary of State. The Council intends to grant a lease for a term in excess of 7 years so it has instructed an independent surveyor to assess whether the offer it has been presented with for the leasehold transaction represents the best consideration reasonably obtainable.
16. Section 145 of the Local Government Act 1972 enables the Council to do, or arrange for the doing of, or contribute towards the expenses of the doing of, anything necessary or expedient for the provision of entertainment of any nature or the provision of a theatre, concert hall, dance hall or other premises suitable for the giving of entertainments and any purposes incidental to that provision.
17. In coming to its decision the Cabinet needs to take account of the Council's fiduciary duties to local residents and taxpayers.
18. The Cabinet must also make its decision having due regard to the Council's public sector equality duties pursuant to the Equality Act 2010 (including specific Welsh public sector duties). This requires the Council, in the exercise of its functions, to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The protected characteristics are: age, gender reassignment, sex, race - including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief. If the recommendations in this report are accepted and when any alternative options

are considered, the Council will have to consider further the equalities implication and an Equality Impact Assessment may need to be completed.

19. Equalities impact assessments will be undertaken as necessary as the proposals described within this report, are developed.
20. The Well-Being of Future Generations (Wales) Act 2015 (“the Act”) places a ‘well-being duty’ on public bodies aimed at achieving 7 national well-being goals for Wales – a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
21. In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff’s Corporate Plan 2022-25.
22. The well-being duty also requires the Council to act in accordance with the ‘sustainable development principle’. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without comprising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
 - Look to the long term;
 - Focus on prevention by understanding the root causes of problems;
 - Deliver an integrates approach to achieving the 7 national well-being goals;
 - Work in collaboration with others to find shared sustainable solutions; and
 - Involve people from all sections of the community in the decisions which affect them.
23. The Cabinet must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible here:

<http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>
24. The Council has to be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards when making any policy decisions and consider the impact upon the Welsh language.

Procurement Law

25. Detailed procurement advice in relation to the proposed transaction is set out in Confidential Appendix 6.

Subsidy Control

26. Detailed subsidy control advice in relation to the subsidy control implications of Options 1, 2 and 3 is set out in Confidential Appendix 6.

Employment Law

27. The Council currently employs 38 staff to deliver the Music and Arts programme at St David's Hall.
28. As Option 1 is essentially "as is" (albeit with the Council needing to invest in the venue), the staff would remain employed by the Council and the Council would retain responsibility for the cost of employing them.
29. If Option 2 is chosen, there is the potential for some or all of those staff to transfer from the Council to the Third Party under the Transfer of Undertakings (Protection of Employment Regulations 2006) (TUPE) and, in any event, the Heads of Terms provide for the Council and the Third Party to treat all staff currently employed by the Council at the venue as transferring under TUPE. The expectation from the Third Party is therefore likely to be that, whilst it would be responsible for those staff after the transfer, it would want certain indemnities from the Council under the Business Sale Agreement including for: all staff costs arising pre transfer; claims from transferring staff arising from pre transfer acts and omissions of the Council when the Council was their employer; and the risk of staff who have not been identified as being in scope to transfer alleging they should also transfer. The Council would also have obligations under TUPE to inform, and potentially consult, with the affected employees' representatives in relation to the transfer.
30. If Option 3 is chosen, as this would likely involve a procurement process and then a service/service concession arrangement to deliver the same/similar services, there is the potential for TUPE to apply to transfer staff to the operator and/or for it to be treated by agreement as a transfer under TUPE. If so, the position in terms of indemnities and obligations is likely to be as per Option 2 above.

Pensions

31. Any existing employees will likely be in the LGPS and it is likely that under any TUPE Transfer they will have Best Value Directions 2007 protection so any buyer would have to either enter an Admission Agreement to join the LGPS or set up a broadly comparable arrangement outside of the LGPS.
32. The Council should consider in advance any cost/ risk sharing processes it is prepared to use around both the buyer's ongoing contributions and any exit deficit, which may arise at some point in the future, to ensure they understand in advance the potential cost implications in allowing a negotiated pass through mechanism as part of the transfer.

Property Implications

33. All immediate property implications are contained within the body of the report and supporting appendices.
34. The Corporate Property Strategy 2021-26 sets out targets relating to Modernisation of the estate, Carbon reduction and reduction of property running's costs. The proposals set out in this report assist the Council in achieving these targets.
35. The key risks associated with the building are clearly identified within Confidential Appendices 1, 2 & 3 and are currently being managed through a Building Management and Health and Safety Strategy, involving practical maintenance and monitoring measures. However, it is important to note that the risks associated with the RAAC planks remain and unless adequate finances and suitable remediation actions are implemented at the earliest possible time, it puts Cardiff Council in an unsustainable risk management situation.

HR Implications

36. The legal implications set out in this report explain the TUPE requirements and pension implications. In addition to the requirements under the (Transfer of Undertakings (Protection of Employment Regulations) 2006 (TUPE), the requirements of the Welsh Government's Code of Practice on Workforce Matters (the Code) must be met (see Appendix 8).
37. The Code is designed to ensure that where public services are outsourced to a third party (including the private or third sector) and staff transfer: (a) TUPE will apply, and if TUPE does not strictly apply, the principles of TUPE will be followed unless there are exceptional reasons for not doing so; and (b) staff of the service provider (whether newly recruited or existing staff) undertaking work on that contract will be employed on terms and conditions which are no less favourable than those of transferred staff, with the exception of pension arrangements where reasonable pension provision must be made as indicated in the Code. The Code requires the contracting authority, in this case the Council, to monitor the implementation of the Code by service providers wherever it applies, and to provide an annual report to the Welsh Government.
38. Agency workers at St David's Hall that have been continuously engaged in the same role for a fixed number of hours per week for the last 4 years, and those that have been doing the same for a period of 2 years, will be offered contracts of employment in accordance with the Fair Worker Policy (either permanent contract or temporary). This will mean that they will be covered by the TUPE legislation. AMG would need to determine for themselves the future use of Agency workers.
39. The trade unions, staff and agency workers have been briefed on the recommendations set out in this report, with a commitment for further engagement once a decision is taken on the options by Cabinet. If required, a formal consultation period will need to take place with staff on a TUPE transfer.

RECOMMENDATION

Cabinet is recommended to:

- 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.

SENIOR RESPONSIBLE OFFICER	Neil Hanratty Director of Economic Development
	Date

The following appendices are attached:

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

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