

## OFFICER DECISION : REPORT

ADDRESSED TO : Neil Hanratty - Director Economic Development

PREPARED BY : Jon Maidment – Head of Parks & Cardiff Harbour Authority

The delegation to be exercised is numbered CD3 in the Council Scheme of Delegations

**TITLE OF REPORT** : Authorisation to issue the Invitation to Tender for the Management of the Secret Garden Cafe

### PROPOSAL:

The recommended decision is to approve the commencement of a procurement process (including issuing of tender documents) in respect of the Management of the Secret Garden Cafe on a concessionary basis and the use of evaluation criteria and weightings as set out in the body of the report.

The reason for the recommended decision is:

To ensure continuity of service provision for the benefit and enjoyment of users to Bute Park and its Visitor Centre.

### PURPOSE

This report is to ensure that a proper and reasonable decision can be taken on the above proposal and

- (a) contains and/or appends all the information necessary to make a proper decision;
- (b) contains or appends all the advice given in relation to the proposal; and
- (c) has been prepared in accordance with the Council/Executive (*delete as appropriate*) Scheme of Delegations

### BACKGROUND

1. The Secret Garden Café located within the walled garden of Bute Park Nursery and Visitor Centre was constructed as part of the Bute Park Restoration & Development Project supported through the National Heritage Lottery Fund and opened in 2011.
2. Since opening there have been three lease agreements with three separate tenants and the most recent agreement came to an end on 24<sup>th</sup> March 2023.
3. A Prior Information Notice was published on 4<sup>th</sup> May 2023, via Sell To Wales and was posted on the Council's Bute Park website on the same date. As a consequence, nine expressions of interest have been received to date.

## **ISSUES**

4. To date, property lease agreements have been entered into. However, in light of operational experience, and additional obligations imposed which would be in addition to a typical landlord and tenant relationship, it has been determined that a management agreement and associated lease ( concession agreement with lease ) may be the most effective way forward from a customer, Council and tenant perspective. It is anticipated that the new agreement will be given for a five year period.
5. A Contract Notice advertising the opportunity to the market is scheduled to be published in July 2023, via Sell 2 Wales and through the Proactis Procurement Portal on the basis of an open procedure.
6. The rental income to the Council is estimated to be £75k over the five year term of the agreement. The value of the agreement to the successful bidder is estimated to be circa £1.125m over the five year term of the agreement.
7. It is proposed that a price / quality weighting of 40% price and 60% quality will be used. It is proposed that the quality criteria are assessed under the headings of, unique selling points, statement of intent, standards and values, added value proposals, financial forecasts, understanding of site specific requirements, investment, management and staff structure, menu, sustainability, branding and marketing strategy and references .
8. The evaluation process will be undertaken by a cross functional team of officers from the Parks, Legal, Procurement, Strategic Estates and Finance services.

## **RESOURCE REQUIREMENTS**

8. The tender documents have been prepared by a cross functional team from the Parks, Legal, Procurement, Strategic Estates and Finance services and within existing resources.

## **CONSULTATION REQUIREMENT**

9. The proposal does not require the carrying out of consultation under statute or at law or by reason of some promise or undertaking previously given by or on behalf of the Authority. Notwithstanding this the New Friends of Bute Park have been consulted on the specification document and evaluation criteria to be used.

## **CONSULTATION EXERCISE AND OUTCOME**

10. The New Friends of Bute Park have been consulted in order to inform the development of the specification document and evaluation criteria and from a customer perspective.

## ADVICE

11. The following advice has been sought on the proposal

Nature of advice: Finance

Council currently receives £17,500 annual rental income from the existing arrangements at Secret Garden Café within Bute Park. As this contractual arrangement is due to come to an end, this ODR seeks approval to commence a procurement process with a view to securing a tenant to continue the management and operation of the Secret Garden Café for the next 5 years.

The level of income to be generated by this opportunity will be determined by bids received as part of the procurement process. However, due to additional requirements and obligations being placed on the proposed tenant regards keeping toilet facilities open and cleaned on a daily basis, it is anticipated this improvement in provisions might result in a slight reduction of annual income to the Council (to circa £15,000 p/a). The Directorate will need to manage any income variances within existing budgets.

Responding officer : Kyle Godfrey

Date given: 16/6/23

Nature of advice : Legal

### Legal Implications

The report seeks approval to commence a procurement exercise to appoint a contractor to operate the Secret Garden Café located in Bute Park and undertake ancillary obligations relating to the management of the public toilets.

Legal Services are instructed that agreement shall be concession type agreement with associated lease and which is expected to last for a period of five years. It is understood that the operator will undertake obligations relating to the Café and also Council's retained property in addition to would be usually expected of a tenant. Legal Services are further instructed that the Council will receive an estimated rental income of £75,000 over the five year term whereas the value to the successful bidder i.e. the potential income that café may generate is estimated to be circa £1.125M.

Legal Services are instructed that the opportunity shall be advertised to the open market via Sell2Wales and via the Council's Proactis Portal. The report provides details on the price/quality weighting and some details on the quality criteria which may be used to assess bidders.

Detailed legal advice should be obtained throughout the procurement process with regard to i) the drafting of all the relevant procurement documentation

(including the draft terms and conditions of contract) and ii) the procurement process in general.

The contractor will be required to enter into a lease of the café to allow the operator to exclusively occupy the café premises to perform the obligations required under the agreement. The Council has power to grant a lease pursuant to section 123 of the Local Government 1972. The decision maker should have regard to advice from a qualified valuer in so far as the rental element of the transaction comprises the total value of the contract. It is anticipated the lease, being granted along a management/concession agreement that the lease will be contracted out of the security of tenure provision of the Landlord and Tenant Act 1954 part II, to ensure the premises are returned to the Landlord at the end of the agreement and lease.

### General Legal Advice

In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, 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. Protected characteristics are: (a) Age, (b) Gender reassignment (c) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation (l) Religion or belief – including lack of belief.

### Well Being of Future Generations (Wales) Act 2015 - Standard legal imps

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.

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 2023-26. When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well-being duty also requires the Council to act in accordance with a '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 compromising 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 integrated approach to achieving the 7 national well-being goals

- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker 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 using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

The decision maker should be satisfied that the procurement is in accordance within the financial and budgetary policy and represents value for money for the council.

The report mentions a consultation with the New Friends of Bute Park. The carrying out of a consultation gives rise to a legitimate expectation that the outcome of the consultation will be considered as part of the decision making process.

The decision maker should also have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

Responding Officer : Mansoor Ali & Richard Crane

Date given: 16/6/23 & 19/6/23

Nature of advice: Finance : Procurement

A Prior Information Notice was issued in May 2023 for suppliers to express an interest in this opportunity, which has confirmed that there is interest from the market in delivering the service required. The requirement will be best met via a concessions agreement. Based on the number of responses and timescales to delivery an open procedure procurement exercise is the most appropriate option, to be advertised through a Contract Notice published on Sell2Wales and through the Proactis Procurement Portal in line with the Council's Contract Standing Orders and Procedure Rules.

Responding officer: Lucy Williams

Date given: 16/6/23

## BACKGROUND PAPERS

13. There are no background papers.

Signature:



Designation: Head of Parks & Harbour Authority

Report Reference: SGC2327

Report date: 19/6/23