

Cheltenham Borough Council
Cabinet – 11 December 2012
Leisure and Culture Commissioning Review

Accountable member	Councillor Rowena Hay, Cabinet Member for Sport and Culture
Accountable officer	Pat Pratley, Executive Director
Ward(s) affected	All
Key Decision	Yes
Executive summary	<p>The leisure and culture review (L&C review) is one of a number of strategic commissioning projects and incorporates Leisure@ (including sport play and healthy lifestyles), Prince of Wales Stadium, Art Gallery and Museum (including Tourism and TIC), Town Hall and Pittville Pump Room.</p> <p>The aim of the review has been to find a viable and sustainable future for the L&C services and, at the same time, by 2017-18 reduce the cost of the services by at least £700Kpa.</p> <p>The review has reached the end of its planning phase which sought to identify the most appropriate service delivery option to meet the needs and priorities of the Council for the L&C services within the agreed resource constraints.</p> <p>The recommendation to Cabinet is that, subject to the outcome of a procurement exercise and based on the evidence contained in the L&C business case, a new leisure and culture trust be created to deliver the services within the scope of this review.</p>
Recommendations	<p>Cabinet is requested to RESOLVE:</p> <ol style="list-style-type: none"> 1. To authorise the Executive Director, in consultation with the Cabinet Member for Sport and Culture and the Borough Solicitor, to commence the processes set out in sections 4, 5 and 6 of this report to create, subject to the outcome of a procurement process, a new charitable trust. The trust would have the legal form of a charitable company limited by guarantee and broad objects to advance health, arts, sports and education. The trust would begin operation no later than 1 April 2014. 2. To agree to the draft 10 year financial plan as outlined in exempt Appendix 1.E to the business case, as amended for the 2013-14 standstill budget to be reported to Cabinet as part of the 2013-14 budget process (see section 3 of this report). 3. That a further report be brought back to Cabinet at a later date to agree the memorandum and articles of association, heads of terms of the various agreements and a detailed business plan (if necessary) as set out in section 7 of this report. <p>And Further:</p> <ol style="list-style-type: none"> 4. Recommend that Council allocate funding for one-off set up costs of

£410,500, as outlined in section 3.14. The source of funding will be recommended by the Council's Section 151 Officer in finalising the Council's revised budget 2012/13 and the budget proposals for 2013-14 including any impact on the MTFS projections as part of the budget setting process for 2013/14, to be agreed by Council in February 2013.

<p>Financial implications</p>	<p>The financial implications are as detailed within paragraphs 3.5 to 3.15 of this report and throughout the Business Plan attached to this report as Appendix 1. In summary, the new trust model is projected to generate savings in excess of £700K per annum by 2017/18 which achieves the target set by Cabinet in view of the worsening MTFS projected funding gap.</p> <p>Contact officer: Paul.Jones@cheltenham.gov.uk, 01242 775154</p>
<p>Legal implications</p>	<p>See Sections 4, 5 and 6.</p> <p>In summary the process for establishing a trust is as follows:</p> <ul style="list-style-type: none"> • Procurement - As the Council proposes to enter into a contractual arrangement for the provision of leisure and cultural services it is necessary for the Council to undertake a limited market testing or advertisement exercise. The full EU Procurement Rules do not apply because the services under consideration fall within a category known as 'Part B' services which require limited publicity. • Subject to the procurement process, the next step would be to recruit trustees. The trust will have 2 appointed council trustees. These council trustees may be appointed by the Leader under the Council's constitution unless there is no Group Leader consensus in which case the appointment will be referred to council for decision. The non-council trustees will be appointed as set out in section 6 of this report • The appointed trustees would proceed, with external specialist assistance and the in house team, to prepare the memorandum and articles of association of the new trust for discussion with the council and submission to the Charity Commission. • The heads of terms of the various agreements set out in section 7 would be progressed. • Once agreement has been reached, a further report would be brought back to Cabinet (and possibly Council depending on any consents required for the proposed leases) for final approval before any legal agreements are entered into. <p>Contact officer: Shirin Wotherspoon, shirin.wotherspoon@tewkesbury.gov.uk, 01684 272017</p>
<p>HR implications (including learning and organisational development)</p>	<p>The HR implications which would arise from the creation of the proposed Trust are outlined in the attached report, specifically relating to pension and TUPE implications for employees. The HR Business Partner would work closely with the service to ensure the required consultation process is followed, keeping trade unions and employees fully informed.</p> <p>Contact officer: Donna Sheffield, donna.sheffield@cheltenham.gov.uk, 01242 774972</p>
<p>Key risks</p>	<p>See Appendix 1.B (within Appendix 1 – Business Case)</p>

<p>Corporate and community plan Implications</p>	<p>See Section 2.6</p>
<p>Environmental and climate change implications</p>	<p>The leisure and culture services will maintain their commitment to minimising any negative impacts on the environment.</p> <p>The increased profile which the trust will be expected to give to active lifestyles and its establishment of a deeper relationship with partners such as the Gloucestershire Environment Trust are expected to make a further contribution to reducing carbon emissions.</p> <p>Therefore, in itself, the proposal will have a neutral or small positive impact.</p>

1. Background

- 1.1** The leisure and culture (L&C) review is one of a number of strategic commissioning projects and incorporates the following service areas:
- Leisure@ (including sport, play and healthy lifestyles)
 - Prince of Wales Stadium
 - Art Gallery and Museum (including Tourism and TIC)
 - Town Hall
 - Pittville Pump Room
- 1.2** The review has now reached the conclusion of its planning phase which includes the appraisal and evaluation of options, in a fair and consistent way, to identify the best option to deliver the outcomes agreed by the Council, value for money and improved performance.
- 1.3** The conclusion of the option appraisal process is that the establishment of a new trust to encompass the L&C services is the best option to not only deliver the priority outcomes but also achieve a subsidy reduction target of £500K - 700Kpa by 2017-18.
- 1.4** Sections 2 and 3 describe the new trust proposal and the options evaluation which led to it being recommended.

2. The Cheltenham Leisure and Culture Trust – A brief overview

Purpose of the trust

- 2.1** The Cheltenham Leisure and Culture Trust would assist the Council in delivering the leisure and culture priority outcomes already agreed by Cabinet and it would be responsible for the management, operation and development of the leisure and cultural portfolio.
- 2.2** The trust would provide strategic leadership for leisure and culture, in order to promote Cheltenham's unique offer for residents, whilst developing Cheltenham as a destination of choice.
- 2.3** The trust would continue to build upon the good work of the in-house service by encouraging participation in leisure and culture activities and seeking to inspire Cheltenham's residents and visitors through the services it will deliver.
- 2.4** By creating a trust with roots in the town, there would be a clear focus on Cheltenham, building on already established links with tourism and local partners to maximise the benefit to the local economy.

Key benefits

- 2.5** The business case in Appendix 1 of this report outlines the key benefits of creating a new trust to operate the services, for example:
- A sustainable future for the services based on a tried, tested and trusted delivery model
 - Increased capability to deliver the outcomes of importance to the Council and others
 - Reducing the Council's subsidy for services and making a substantial contribution to the Council's achievement of a balanced budget
 - Retention of the synergies between leisure and culture, i.e. their common link to healthy lifestyles, their overlapping customer base, their shared strategic partners, and the economies of scale achievable by streamlining common functions.

Meeting the Council's strategic objectives

2.6 The creation of a new trust for the L&C services supports the Council's strategic objectives:

- **Enhancing the provision of arts and culture** - building on the strengths of the current services by reaching out to communities, encouraging participation and looking to inspire Cheltenham's residents and visitors through arts.
- **People are able to lead healthy lifestyles** - providing services which not only help people keep physically and mentally active but also maintain and strengthen already good working partnerships with the health and education sector. As a Cheltenham centric trust the focus of these relationships will be on the direct benefit of Cheltenham.
- **Ensuring we provide value for money** - maximising the chances of further reducing the Council's subsidy, diversifying and extending links with funding organisations and using its flexibility to introduce cost efficiencies.
- **Strategic commissioning** – a charitable trust model complements those organisations set-up to deliver the services the Council has already commissioned, i.e. shared services structures, notably GO Shared Services providing HR, Finance and Procurement; company options such as Cheltenham Borough Homes which provides housing management and Ubico Limited which provides waste and environmental services. Together with direct in-house delivery, these organisations give a range of options for running services which the Council may wish to use in future as other services are commissioned.

New Trust Management Contract and Management Fee

2.7 The new trust's draft financial plan outlines the management fee payable to the trust from the start of the financial year 2014-15. In order to give the new trust time to settle down once created and to give certainty as to the future, particularly in terms of attracting external funding or planning long term, it is suggested that the contract term that the Council enters into with the new trust is for 10 years with an option to renew for a further period.

2.8 In addition, it is suggested that any management fee paid by the Council is agreed for, say, the first 5 years of full operation of the new trust, i.e., 1 April 2014 to 31 March 2019. The contract should, however, make provision for the management fee to be reviewed during the financial year 2018-19 for implementation the following year.

3. Options appraisal

3.1 Following the long-listing and short-listing of potential options the final stage of options appraisal compared the creation of a new trust for all services with either keeping the service in-house or delivering all services through an existing trust.

3.2 All essential criteria are met by the new trust option, i.e. the Council would retain its freehold interest in the buildings within scope of the review; the trust would have to meet the requirements of funding partners such as the Heritage Lottery Fund; and the Council would retain ownership of exhibits and heritage assets.

Non-financial assessment

3.3 The new trust was deemed the most favourable when compared to the other options based on the assessment criteria which had been developed in conjunction with a cross party group of members supporting the review (the Cabinet Member Working Group - CMWG). The factors which made it stand apart from the other options included:

- A governance model with a high calibre board of trustees, focussed on Cheltenham, with the time and ability to concentrate their efforts on the successful operation of the trust
- Access to funds not available to local government, for example, VAT exemptions, gift aid, and charitable rate relief (although it is accepted that this is no longer as financially attractive in the light of recent changes to legislation)
- Potential for even greater collaboration across sectors and agencies where a board of trustees may include senior representatives from, for example, education, health, culture and sport.

- 3.4 The one area where the in-house service scored more highly than the new trust was in relation to the ability to demonstrate a successful track record and sound business management. This is due to the simple fact that a new trust, being a new entity, has no historical evidence. However, if a new trust is created, the existing staff would transfer to the new trust under TUPE (Transfer of Undertaking (Protection of Employment)) Regulations 2006.

Financial assessment

- 3.5 Recognising the fact that the Council's Medium Term Financial Strategy (MTFS) had worsened since 2011, the original L&C review financial target was reviewed by Cabinet and increased to between £500K and £700Kpa by 2017-18. This financial target is on top of the £138Kpa saving that was built into the 2012-13 budget after the conclusion of the analysis phase of the review.
- 3.6 The financial plans for the new trust and in-house options can be found at the exempt Appendices 1.E and 1.G of the business case. The criteria set for the financial assessment reflected the need to not make the MTFS worse in the short-term, to maximise income and optimise costs and to recover set up costs within a timeframe acceptable to the Council.
- 3.7 Over the 5 years 2013-14 to 2017-18 the savings to the Council satisfy the criteria set by Cabinet.
- 3.8 It should be noted that the financial plan appended to the business case takes as a baseline the 2012-13 financial position. The plan does not include normal adjustments to budgets that will be made in the 2013-14 budget process to take account of, for example, any increases in utility costs, salary cost increases arising from pay awards or increments due.
- 3.9 The financial plan for the proposed new trust has been completed on a prudent basis, based on external benchmarking data and current income trends within the service. The individual income and expenditure streams within this model have been examined and a sensitivity analysis applied where relevant. Four scenarios have been modelled, ranging from 20% worse than the base model to 20% better. In the worst case scenario the savings after five years remain within the target range set by Cabinet; in the best case, savings considerably exceed the target.
- 3.10 Details of the sensitivity analysis can be found in the exempt appendix 1.F of the business case.
- 3.11 **Cabinet is therefore being asked to approve the draft 10 year financial plan as outlined in Appendix 1.E to the business case, as amended for the 2013-14 standstill budget to be reported to Cabinet as part of the 2013-14 budget process. (Recommendation 2)**
- 3.12 Investment schemes have been excluded except for a gym equipment replacement programme which produces a return on investment of 14.4%pa (against a corporate target of 5% for invest to save proposals). The capital investment requirement does not form part of the financial recommendation within this report and will be included in the 2013-14 budget report. Therefore, if Cabinet and Council do not endorse the capital investment for the gym equipment replacement programme the additional revenue outlined in the financial plan will not be delivered. Such a decision would have the same impact on in-house operation as well as the new trust proposal and therefore would not affect the outcome of the financial assessment.
- 3.13 The trust may require a revolving credit facility to allow it to overcome initial cash flow issues (relating to matters of timing). More detailed cash flow analysis will be undertaken to confirm whether there will be a need for this and the size of any such facility.
- 3.14 Net set up costs of £410,500 arise from a number of sources including specialist pensions, legal and HR advice; additional one-off costs arising from the creation of the new trust; and some minor capital expenditure in relation to marketing/launch costs of a membership/loyalty card scheme. There is no current budget provision for set up costs.
- 3.15 A proportion of the set up costs will be incurred before the end of the current financial year and these will need to be reflected in the 2012-13 revised budget. The remaining set up costs will be incurred in 2013-14 and 2014-15 and will form part of the 2013-14 budget proposals and MTFS projections.

3.16 Cabinet is therefore being asked to recommend that Council allocate funding for one-off set up costs of £410,500, as outlined in section 3.14. The source of funding will be recommended by the Council's Section 151 Officer in finalising the Council's revised budget 2012/13 and the budget proposals for 2013-14 including any impact on the MTFS projections as part of the budget setting process for 2013/14, to be agreed by Council in February 2013.(Recommendation 4).

4. Proposed legal form

Procurement

4.1 Specialist legal advice has been obtained regarding the need for a procurement process when a new trust is being considered (see exempt Appendix 2). It will be necessary to advertise the opportunity. Those expressing an interest will be required to complete a Pre-Qualification Questionnaire (PQQ). Subject to the level of response and the outcome of the PQQ process, the Council may then need to undertake a competitive tender process.

Legal Form

4.2 There will be a number of matters which would require later approval during the period running up to the inception of a new trust and these are outlined in section 7. However, Cabinet needs to provide direction now regarding the proposed legal form of a new trust in order to be able to proceed with the recruitment of trustees.

4.3 It is proposed that the new organisation would be created as a charitable company limited by guarantee (CCLG). This is the legal model recommended for initiatives of this nature and the one most commonly used. It is up to date and fit for purpose. Officers are monitoring the progress of legislation relating to Charitable Incorporated Organisations and will report back to Cabinet if necessary.

4.4 A company is proposed as most importantly this creates a separate legal entity. It will be the legal entity that enters into the suite of project documents not the individual board members. Hence any debts or liabilities will be those of the company not the board members. This offers significant and important protection to the trustees.

4.5 Furthermore, a company structure is extremely flexible allowing for the creation of subsidiary companies and/or group structures. It is familiar to the private sector and operates in a transparent regime.

4.6 Importantly a charity is also a "trusted" brand. The trust would be regulated by the Charity Commission which requires the highest standards of good governance.

4.7 To establish a charitable company, it would be necessary to first register the company and then apply to the Charity Commission for charity registration.

4.8 A charitable company is regulated by both Companies House and the Charity Commission. The directors of a charitable company are both directors and trustees and hence have duties and responsibilities under both the Companies Acts and Charities Acts.

5. Charitable objects

5.1 One of the most important parts of the constitution of any type of charity is its objects. The objects are the list of aims and objectives and set out among other things what the charity is setting out to do, who or what will be the beneficiaries of its work and how the charity is going to achieve what it wants to do.

5.2 The Charity Commission prefer new charities to use "model objects" where possible. In broad terms the objects will advance, health, arts, culture and heritage, amateur sport and education.

6. Board of Trustees

- 6.1 The new trust's draft business plan refers to the creation of a board of 11 trustees comprising;
- 2 Council Trustees appointed as per part 3A of the Council's constitution
 - 9 Trustees recruited through an open advert and selection process
- 6.2 The recruitment, selection and appointment of trustees are key success factors for a new trust. The recruitment process will be agreed with the Cabinet Member. It is envisaged that the selection panel for non-councillor trustees will include as a minimum the Leader, Chief Executive, Cabinet Member for Sport and Culture, with advice from a specialist person with experience in the area of trustee recruitment.
- 6.3 The appointment of trustees will be one of the key milestones in the implementation process as they will initially operate as a shadow trust to put in place the required structures and organisation to deliver the trust vision and outcomes expected by the Council.
- 6.4 **Cabinet is, therefore, asked to authorise the Executive Director, in consultation with the Cabinet Member for Sport and Culture and the Borough Solicitor, to commence the processes set out in sections 4, 5 and 6 of this report to create, subject to the outcome of a procurement process, a new charitable trust. The trust would have the legal form of a charitable company limited by guarantee and broad objects to advance health, arts, sports and education. The trust would begin operation no later than 1 April 2014. (Recommendation 1).**

7. Other matters for future reporting

- 7.1 If the recommendations above are approved the procurement process will be commenced. Subject to the outcome of the procurement process the next key stage would be to launch the trustee recruitment campaign and the commencement of the implementation of the new trust arrangements. This will include the preparation of a number of agreements including:
- Memorandum and Articles of Association
 - Heads of terms for the Funding and Management Agreement
 - Heads of terms for Leases
 - Heads of terms for the Collection Agreement
 - Heads of terms for the Transfer Agreement including TUPE and pensions provisions
 - Heads of terms for the Support Services Agreement
- 7.2 **Therefore Cabinet is being asked to receive a further report at a later date to agree the memorandum and articles of association, heads of terms of the various agreements and a detailed business plan (if necessary) (Recommendation 3).**

8. Reasons for recommendations

- 8.1 As per the main body of the report.

9. Alternative options considered

- 9.1 As explained in section 3.

10. Consultation and feedback

- 10.1 Consultation with key stakeholders has been undertaken throughout the review.
- 10.2 In autumn 2011 a series of workshops took place with a wide range of external stakeholders from the leisure and culture sector, commercial sector, public and voluntary sectors, from education and from our religious communities. The conclusions were reflected in the outcomes subsequently agreed by Cabinet and in the criteria used to evaluate options.

- 10.3** A further workshop for external stakeholders took place on 23rd November 2012. Stakeholders asked several questions focussing on procurement, protecting the interests of users and the provision of arts and sports by a single organisation. They gave advice on the qualities and attributes that we should look for in trustees and expressed their desire for continued consultation as the process moves forward.
- 10.4** A Cabinet Member Working Group was established in May 2011 and has supported the review throughout. At its meeting on 12th November 2012, it received a detailed presentation on the new trust proposal and its evaluation. Feedback from members was generally positive and focussed on mitigating areas of risk. Members' comments have been taken into account in the risk analysis and elsewhere in this report.
- 10.5** Regular information on the progress of the review has been provided to members in the Member's Briefing and all members were invited to a seminar on 21st November 2012. Responses will be provided to several detailed questions which were asked on the proposal and its implementation. Feedback was generally positive.
- 10.6** Consultation has also taken place with the trade unions throughout the process and they were advised of the proposal on 15th November 2012. The unions have asked for the timing of the tendering of the box office service to be reconsidered in the light of the proposal – the Director of Wellbeing and Culture is considering this request. The review has agreed to maintain regular briefings for the trade union team and to provide more information on charitable trusts and how they compare to other business models (to be provided by One Legal at the January meeting of the trade unions).
- 10.7** Special staff briefings for each area within the current leisure and culture service were held in the week of 12th November 2012. Answers to questions asked will be made available on the staff intranet.
- 10.8** All other CBC staff have been made aware of the proposals via the intranet and management briefings.
- 11. Performance management –monitoring and review**
- 11.1** Robust governance and monitoring procedures will be put in place to support the proposed trust and protect the Council's interests.
- 11.2** A trust would benefit from the oversight of the Charity Commission and would be led by a board of trustees recruited for their skills, experience and commitment to its objects. As explained in section 6, 2 of the 11 trustees will be councillors.
- 11.3** The performance of the proposed trust could be monitored and reviewed through the Council's scrutiny function, on an annual basis or more frequently. The Council's Audit Committee will look at the proposed governance arrangements.
- 11.4** Quarterly meetings to discuss strategic direction and other relevant matters would be held between the Chairman of the Board of trustees, the trust's Chief Executive, the relevant CBC Cabinet Member and the council's Chief Executive. The trust would be expected to involve all CBC members through its community engagement activities.
- 11.5** Contractual arrangements would be agreed between the Council and trust which specify the Council's requirements and the detailed arrangements for monitoring. Council officer resource for monitoring the contract is included in the financial plan.
- 11.6** It is anticipated that the trust would be asked to present its business plan before the trust is put in place and annually thereafter.

11.7 During the next stage of the review the Council's standard project management methodology will be used to direct the procurement process and, subject to its outcome, the subsequent implementation of the trust. Where appropriate, separate governance and professional advice will be given to the commissioning and provider teams. The review will continue to be supported by Members and its financial proposals will be scrutinised by the Budget Scrutiny Working Group.

12. Impact on carbon emissions

12.1 The new trust's focus on reducing emissions will remain as strong as it is now. Indeed its opportunities to deepen relationships with key partners such as the Gloucestershire Environmental Trust may lead to further environmental benefit.

13. Equality and community impacts

13.1 The Council takes its statutory duties to promote equality of opportunity seriously. The 2010 Equality Act sets out that we must have due regard to the need to advance equality of opportunity between people who share a protected characteristic and those who do not. The groups that share a protected characteristic include those defined by age, ethnicity, disability, religion or belief and sexual orientation

13.2 Cabinet will therefore need to be mindful of this statutory duty in its deliberations about the creation of a new leisure and culture trust for Cheltenham, though officers are confident that the commissioning process has taken on board the requirements of the statutory duty.

13.3 Analyses of health and culture needs have been undertaken to support the commissioning review.

13.4 The health needs analysis identified the particular groups that are more vulnerable to poor-health through either lifestyle factors or participation rates. These groups included females, disabled groups, black and minority ethnic groups, people in lower socio-economic groups and older people.

13.5 The culture needs analysis identified the groups that are less likely to participate in cultural activities such as older BME groups, single males, and social housing tenants. Alongside the needs analysis, the Council has also worked with the Heritage Lottery Fund to specify the groups where additional participation should be encouraged as part of the new art gallery and museum extension.

13.6 These needs analyses led to the development of the outcomes framework (see Appendix 1.A of the business case) that will form the basis of any agreement with the new trust. Our outcomes recognise the groups where participation is potentially lowest and enshrine the requirements to advance equality of opportunity.

13.7 Outcomes (excerpt) for leisure services:

More people have active and healthy lifestyles by participating in positive leisure activities that they are able to access at affordable prices with a particular focus on:

- Older people;
- Children and Young People;
- Disabled people – both children and adults;
- Black and minority ethnic groups;
- People from lower socio-economic groups.

13.8 Outcomes (excerpt) for cultural services:

More diverse audiences are introduced to, and participate in heritage activities by specifically targeting six key audiences:

- Young People (16-25);
- Students;
- People from under-represented groups (inc. culturally diverse / socio-economic disadvantaged families);
- Residents from Cheltenham itself and Gloucestershire;
- Teachers and school groups (primary and secondary);
- Day visitors.

13.9 It will then be up to the new trust to decide how best to deliver these outcomes, though it is worthwhile noting that current service provision is already delivering successfully against these outcomes with a range of targeted interventions that are increasing participation from these groups.

13.10 Given these outcomes and the statutory duty, equality questions will be included within the PQQ.

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Appendices	<p>1. Cheltenham Leisure and Culture Trust – Business Case including the following appendices</p> <ul style="list-style-type: none"> A. Leisure and Culture Commissioning Outcomes B. Risk Analysis C. Evaluation Details (exempt) D. New trust business plan (exempt) E. New trust financial plan (exempt) F. Sensitivity analysis for the new trust financial plan (exempt) G. Financial plan for the improved in-house model (exempt) H. Summary of options evaluation (exempt) <p>2. Legal advice on the procurement of a new trust (exempt)</p> <p>Exemptions are in accordance with Paragraphs 3 and 5, Part (1) Schedule (12A) Local Government Act 1972</p>
Background information	