

BRIDGEND COUNTY BOROUGH COUNCIL
REPORT OF THE CORPORATE DIRECTOR COMMUNITIES
CABINET

1 SEPTEMBER 2015

BRIDGEND CULTURAL PARTNERSHIP

1. Purpose of Report

The purpose of the report is to seek Cabinet approval to proceed with the transfer of cultural services to Awen Cultural Trust from 1st October 2015.

2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

2.1 Cultural Services play a vital role in the wellbeing of communities across the County Borough of Bridgend.

2.2 This report links to the following Corporate Priorities:

- Working together to develop the local economy
- Working together to raise ambitions and drive up educational achievement
- Working together to help vulnerable people to stay independent
- Working together to tackle health issues and encourage healthy lifestyles
- Working together to make the best use of resources

2.3 The proposal linked to this report also directly links to the Council's Medium Term Financial Strategy (MTFS).

3. Background

3.1 A critical area of work for the Council has been to determine how to tackle the long term sustainability of some of its cultural facilities and activities, in the context of diminishing public funding resources. It was required to consider what delivery models are most suitable to achieve the best artistic, cultural and wellbeing outcomes for the people of Bridgend. At the same time it has to achieve immediate MTFS outcomes and the flexibility to respond to future financial pressures.

3.2 A full business case indicated that in developing an alternative service delivery model the Council could achieve its targeted MTFS savings for the period 2015/16 to 2017/18 of £625K. In doing so, it provided an alternative solution to service reduction models that may otherwise have needed to be considered.

3.3 On 13th January 2015, Cabinet resolved to work in partnership with a locally based charitable trust to achieve common objectives aligned to the Council's corporate priorities and to manage and operate the following facilities:

- Community and youth arts development
- Grand Pavilion, Porthcawl
- Maesteg Town Hall

- Blaengarw Workmen's Hall
- Community centres
- Library services
- Bryngarw House & Park
- B-Leaf and Wood-B

3.2 All of the above mentioned services are discretionary services other than the Library Service. Public Library Services in the United Kingdom were made a statutory service of local government by legislation enacted in 1964 - The Public Libraries and Museums Act. This legislation requires local authorities to provide a "comprehensive and efficient library service for persons desiring to make use thereof". Responsibility for overseeing the terms of the 1964 Act in Wales rests currently with the Deputy Minister for Culture & Sport, who has a duty under Section 1 of the 1964 Act 'to superintend and promote the improvement of the public library services provided by local authorities..... and to secure the proper discharge by local authorities of the functions in relation to libraries conferred upon them as library authorities by or under the 1964 Act'.

3.3 It was agreed that a new charitable entity is established as a charitable company limited by guarantee. It would have exclusively charitable objects and will apply to the Charity Commission for charity registration. It will be governed by a voluntary board of trustees.

3.4 A transfer target date of 1st October 2015 was agreed and the necessary delegations authorised to implement the proposal to meet this timescale.

4. Current Situation / Proposal

4.1 Since the Cabinet decision in January 2015 to proceed with the establishment of a new NPDO (hereon referred to as 'the Trust'), project management arrangements have been initiated to provide the necessary governance and oversight of the range of complex tasks associated with the transfer of services to a newly established organisation. A multi-disciplinary Project Board was created and chaired by the Corporate Director Communities.

4.2 The project is multi-faceted but the key tasks can be summarised as follows:

The Trust

- Incorporating a new organisation
- Recruiting trustees
- Bank accounts and various registrations
- Developing a business plan
- Establishing systems
- Operational practicalities

The Council

- Stakeholder engagement
- Commissioning priorities / Outcomes framework
- Staff engagement and consultation
- Risk analysis

- Medium term financial strategy delivery

The Partnership

- Legal agreement
- Support services arrangements
- Funding arrangements (management fee)
- Property leases and estate management

- 4.3 It was established from the outset that this proposal is being progressed within an ethos of partnership which the Council has successfully adopted for a range of other service models. In creating a *Cultural Partnership* between itself and the Cultural Trust, the Council will continue to play an active strategic and supportive role in the development of facilities and services. Through its commissioning function it will ensure that the county borough's cultural offer is aligned to its own corporate priorities for the area. Appendix D sets out a proposed Outcomes Framework by which to measure the partnership's success. It also sets out indicative key performance indicators by which to monitor and secure minimum levels of service quality and provision.
- 4.4 Following workshops with staff across the services in scope, a name was derived for the new organisation which again complements the Council's vision and values of the services. Awen Cultural Trust Limited was incorporated in May 2015. Awen represents the Celtic word for *inspiration*. It is proposed that the partnership is acknowledged by the strap line "Awen Cultural Trust – Enhancing cultural life in partnership with Bridgend County Borough Council".
- 4.5 A full and open recruitment process was undertaken in April / May 2015 to recruit the Trustees. The new Board consists of a maximum of eleven trustees, comprising two local authority trustees, eight community trustees and one staff trustee. The Trustees have a range of skills and expertise which will contribute to the success of the new charity, with particular regard to business and financial skills. All Trustees have been briefed as to their duties and responsibilities and understand that their overriding obligation is to act in the best interests of the charity in fulfilling its objects. A Chair has already been elected. The Trust is wholly independent of the Council. A structure of advisory groups will be considered by the Trust to secure local engagement on key areas of work.
- 4.6 Appendix B provides a financial summary of the transitional business plan ('the Plan') for Awen Cultural Trust Ltd. The Plan has been developed and approved by the Shadow Board and scrutinised by the Council's finance officers. It demonstrates some of the opportunities and the priorities for the first three years of operation. Whilst development, funding and business development strategies will be devised in due course, the Plan is pragmatic and focussed on securing an operational cost model that accounts for the management fee profile detailed in Section 7 of this report.
- 4.7 Appendix A sets out summaries of the main provisions of the Partnership agreement between the Council and the Trust. Some of these are itemised below as important to the Council's position:

- a. The Trust is appointed to provide services and agreed service outcomes throughout the service period of 20 years.
- b. It will perform the services in accordance with the agreed transitional business plan and, from thereon, annual service delivery plans to be agreed with the Council.
- c. The Trust is under an obligation to review its programme and activities to meet the changing needs of the local community
- d. Funding of the Trust's activities, i.e. the management fee, is to be agreed in three year tranches according to a defined mechanism.
- e. Formal processes are included to allow both the Council and the Trust to request and agree a change in services.
- f. Leases will be granted to the Trust for the defined properties in scope but if the Partnership Agreement is terminated for any reason, the Council can exercise its right to break the leases in accordance with the terms of the relevant lease.
- g. Equipment and assets, including the Book Stock, are loaned to the Trust, and therefore returned to the Council in the event of termination. This safeguards assets critical for the delivery of the services.
- h. Provisions are made for adjustments to the management fee, but where such adjustment is of a material nature or is a partial or voluntary termination of the Agreement by the Council, the Trust will be compensated for losses incurred.
- i. Provision has been made for the Council to terminate the agreement in the event of the Trust default e.g. persistent or material breaches of the Agreement.

- 4.8 Provisions are made within the Business Transfer Agreement for staff within scope to transfer to Awen Cultural Trust under the Transfer of Undertakings (Protection of Employment) (TUPE) regulations. The Trust will seek to ensure that it employs staff at appropriate industry or sector standard rates. It is also a provision of the Agreement that the Trust has due regard to implementing the principles set out in the Code of Practice.
- 4.9 A full consultation process has been entered into with all staff in scope in conjunction with Trade Union representatives. Given the nature of the transformation, the Council exceeded the statutory 45 day consultation period to allow full and proper consideration of any emerging concerns.
- 4.10 As set out in the recommendations of the January 2015 Cabinet report, the Trust have applied for admitted body status to the Local Government Pension Scheme administered by Rhondda Cynnon Taf County Borough Council. As detailed in Appendix B, the Council shall act as guarantor for the pension scheme for the life of the Agreement. Further implications of this arrangement are set out within Section 7 of this report.
- 4.11 If Council decided to bring provision of any of the services back into the Council, with a proportionate reduction in the management fee, the NPDO could continue to trade but relevant employees would transfer back to the Council by operation of the TUPE regulations.
- 4.12 An NPDO with charitable status has any surplus generated re-invested into the organisation which will ultimately benefit the community and its activities. The ability to accumulate a reserve is critical to any business and the Trust will look to ensure a build-up of healthy reserves to secure its sustainability.

- 4.13 Provision has been made within the Partnership Agreement to provide the necessary flexibility for the Partnership in terms of building maintenance. The Council will retain responsibility for building structures while the Trust will be responsible for minor repairs and decoration. It is based on returning the facilities back in no worse condition at the end of the Agreement period. The Council retains the right not to repair if it deems it economically unviable to do so, but with provision for the Trust to seek compensation for the financial impact of such decisions. The Communities Directorate, as the client department will be required to bid into the cycle of capital funding for resources to meet an annually agreed maintenance programme. The Trust will take full risk on utility tariff and consumption but with a commitment to the carbon reduction agenda.
- 4.14 Specific drafting has been included to accommodate the specialist nature of the services at B-leaf and Wood-B. The Agreement will ensure that clear line of sight continues to exist between those services and the Council's Community Support Team, and that the Trust exercises the relevant protocols and procedures for the protections and safety of the service users and staff. The Council will be required to name a client officer at the appropriate senior level to act as a contact point between the Trust and these specific services.
- 4.15 In transferring services to the Trust, the Cabinet Report of January 2015 also acknowledged that the Trust will need a robust support services budget that covers capacity for HR, maintenance, financial, ICT, legal and insurance costs. A calculation has determined a level for this which is a proportion of the current Central Costs aggregated to the services in scope.
- 4.16 A significant element of this budget will be utilised to buy back services from the Council on a 12 month Service Level Agreement basis. The following services are included and will ensure that the Trust receives a professional service in the first 12 months of its operation:
- Payroll and contracts
 - ICT networking and service support
 - Employee relations support
 - Health & Safety advice and guidance

Identifying the above services as buy-back services for a 12 month period allows the Council an opportunity to plan for change in the event that the Trust decides to procure its services from the open market.

5. Effect upon Policy Framework & Procedure Rules

There is no effect upon Policy Framework and Procedure Rules.

6. Equality Impact Assessment (EIA)

- 6.1 The EIA screening document indicated that a full EIA should be carried out within 12 months of the policy's implementation but given the transformational nature of the proposal a full EIA has been completed, which is attached at Appendix E.
- 6.2 Cultural Services contribute a great deal to the equalities agenda and the EIA reflects on the positive impact that this proposal can make. It points to the

promotional opportunities that exist and can be further developed to offer activities and services to every one of the protected characteristic groups. The Agreement and associated Outcomes Framework (Appendix D) obligates the Trust to maximise participation in cultural activities by “all sections of the local community regardless of age, earnings or ability”.

- 6.3 There is mitigation proposed to ensure that safeguarding policies are in place with regards B-Leaf and Wood-B. This is presented in Section 4 of the report.

7. Financial Implications

- 7.1 The MTFS approved by Council on 25 February 2015 sets out a reduction target for Cultural Services of £491,000 over the three years from 2015-16 to 2017-18. It sets out a reduction target of £134,000 for the Adult Social Care B-leaf and Wood-B programmes over the two years 2015-16 and 2016-17.

Financial Year	Target Reduction (£'000's)
2015/16	208
2016/17	317
2017/18	100
Total Savings (by 2017/18)	625

- 7.2 Should the Council find it necessary to seek further budget reductions in future years, these will need to be agreed by the Trust either as part of agreement of the annual service delivery plan or as a specific variation notice.
- 7.3 Cabinet should note that the financial risk of the Trust operations largely still rests with the Council. These are principally around pensions (for which the council will act as guarantor), growth of the Trust's commercial income and delivery of operational efficiencies. As such, any failure by the Trust to achieve financial targets, particularly in early years of operation, is likely to result in a request by the Trust to the Council to increase the management fee or reduce the provision of non-commercial services it operates.
- 7.4 The support services fee calculation explained in 4.17 represents a fair assessment of the cost to the council of the “back office” support costs. The Trust has the choice to buy back the services from the Council or procure externally in the future if it determines this is commercially advantageous.

8. Recommendation

It is recommended that Cabinet:

- 8.1 approves the transfer of cultural services to Awen Cultural Trust from 1st October 2015 with the partnership acknowledgement as proposed in 4.3 of this report.
- 8.1 approves the Transitional Business Plan (Appendix B) as a template for the effective and efficient delivery of cultural services over the three year period 2015-2018.
- 8.2 notes the key risks as outlined in Appendix C of this report.

- 8.3 approves the Outcomes Framework and key performance indicator set (Appendix D) as the basis for the initial service planning agreement with final measures to be agreed
- 8.4 approves the management fee proposal as set out in Section 7 of the Report and delegates authority to the Corporate Director Communities and the Corporate Director Resources (Section 151 Officer) to finalise the management fee in accordance with the principles set out in Section 4.
- 8.5 approves the key provisions of the partnership agreement outlined in Appendix A of this report and the associated proposals outlined in Section 4 of this report, delegating authority to the Corporate Director, Communities to approve the final terms of the Partnership Agreement and any ancillary documentation, in consultation with the Assistant Chief Executive Legal and Regulatory Services and the Section 151 Officer and to arrange execution of those agreements on behalf of the Council.
- 8.6 approves the granting of leases to the cultural trust, co-terminus with the terms of the Partnership Agreement.
- 8.7 authorises the Corporate Director Communities to be the named Council Officer as referred to within the Partnership Agreement and delegates authority to the Corporate Director Communities to undertake necessary contract variations to the benefit of the Council and the Cultural Partnership, in consultation with the Assistant Chief Executive Legal & Regulatory Services in order to ensure that any variations comply with current legal requirements and in consultation with the Head of Finance or the Section 151 Officer where any proposed variations would have an ongoing financial impact for the Council. Any significant changes will be referred back to Cabinet.

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Background documents