



REPORT TO ABERDEENSHIRE COUNCIL – 24 JANUARY 2017

ABERDEENSHIRE SPORT & CULTURE TRUST – DEVELOPING A FULL BUSINESS CASE

1 Recommendations

Council is recommended to:

- 1.1 note the information regarding the available mechanisms for ensuring strong strategic alignment and democratic accountability;**
- 1.2 note the result of the public consultation;**
- 1.3 agree that officers should move to develop a Full Business Case for delivering sport and cultural services by establishing a charitable company limited by guarantee with Aberdeenshire Council as its sole member;**
- 1.4 agree that the Head of Legal and Governance be appointed as the interim director of the company;**
- 1.5 agree the key activities in developing the Full Business Case at 2.10 - 2.11; and**
- 1.6 agree the cost of additional capacity and expertise to develop the Full Business case.**

2 Background / Discussion

Introduction

- 2.1 At its meeting of 24th November 2016, Aberdeenshire Council considered a report, "Alternate Delivery Model – Sport & Culture". Council identified a company, limited by guarantee and with charitable status as its preferred option, and agreed to consider further proceeding to a Full Business Case (FBC). Council agreed to receive a further report detailing:
- (i) further information about the controls and influence the council would have over the services, in particular the accountability to elected members;
 - (ii) the results of consulting the public about the principle of delivering services through a company;
 - (iii) the workplan for developing the FBC and preparing for any future decision; and
 - (iv) the costings for any additional capacity or expertise required to develop the FBC

As well as responding to these points, this report also highlights some of the key issues which will be addressed as part of the next stage.

Strategic alignment and accountability

- 2.2 Companies which seek to be registered as a Scottish Charity are required to be sufficiently independent to pursue their charitable aims. The company would be responsible for delivering services which the Council and public value highly, and which require significant ongoing financial support from the Council. Both in committee and in the previous debate in Council, members expressed the principle of democratic accountability and ensuring future strategic alignment with the company to be a key issue. From evidence of other areas where local authorities use such companies as a delivery mechanism, there are a variety of ways in which the Council can ensure their strategic priorities are delivered by a company, which are outlined here but which would be explored further and detailed in the FBC.
- (i) The company will be established by the Council, who will draft its “constitution” – the memorandum and articles of association, etc – within which will be defined the charitable aims of the company. Future directors of the company are required to be sufficiently independent in pursuit of these aims. These aims could only be changed in future with the Council’s consent, as the sole member.
 - (ii) The company would be a wholly-owned asset of the Council. The anticipated legal structure is a company, limited by guarantee with a single “member” (members is the term equivalent to shareholders in a limited company). The sole member will be Aberdeenshire Council. The council will appoint and dismiss directors, and is the sole voter in Annual and Extraordinary General Meetings, which are required to make changes to the board of directors, or to the company’s constitution.
 - (iii) All the property assets (sport centres, museums, libraries, etc) remain owned by the Council, from which the company would deliver services on the Council’s behalf. The company would occupy our premises under the authority of a licence from the Council, which could be revoked or amended as required.
 - (iv) The company would operate under a management contract, which the Council would draft.
 - (v) Scrutiny of the company’s performance would be within a performance management framework drafted by the Council, and incorporated in to the management contract. Performance indicators, similar to the current suite of PIs, would be presented to committee as they are now.
 - (vi) Should the trust go ahead the management fee should be in the region of £3m per quarter, and would be released dependent upon satisfactory performance against the management contract. Should the company not satisfy the Council in its performance, there would be a risk of losing payment of the management fee, without which the company would likely no longer be viable. This would be a significant factor for the company directors to consider in all their decisions.
 - (vii) Any management contract could ensure that elected members’ current expectation of responses to scrutiny would continue as they are now.

Consultation response

- 2.3 The Outline Business Case identified potential savings to the Council revenue budget of £1.1m per annum, primarily through Non Domestic Rates Relief and VAT savings, against a current budget of c£12m. Elected members in the Education Learning & Leisure Committee and in Full Council raised the potential issue of the change in the accountability of elected members for the services. It was agreed to test the principle of that change against the potential savings with the public, as part of the wider budget consultation.
- 2.4 1073 submissions were received which directly addressed the principle of delivering services through an alternative model. Of these 60.54% expressed support and 39.46% gave a negative response.
- 2.5 Those answering 'no' to the question were provided with space to detail why. 253 comments were received outlining why respondents' did not support the principle. The top 5 recurring areas of concern within these responses were:
- Concerns about reduction in service quality, increased costs for users, closure of facilities (19.63%)
 - Belief that these are public services and should remain the responsibility of the council to deliver (15.19%)
 - Concerns about the perceived failure of other charitable companies (14.81%)
 - Concerns about the loss of democratic accountability (10%)
 - Concerns about upheaval for staff and potential for job losses or changes (9.26%)
- 2.6 287 additional comments were received, the top 5 recurring themes within these were:
- General support that a charitable company should continue to be considered (22.46%)
 - Support as long as it does not lead to service reduction, higher charges or changes to jobs (17.11%)
 - Disagreement with a move to a charitable company (14.97%)
 - Calls for increased promotion and income generation of services (11.76%)
 - Libraries should not be included in-scope (11.23%)

Other common themes included: requests that staff and residents are kept informed and consulted on any changes; support, given the perceived success of other companies in Scotland; suggestions to consult with other councils who have created similar arm's-length organisations.

- 2.7 In addition to the on-line SurveyMonkey question, a series of face-to-face discussions with community groups took place during the same period. These took place in the CLD networks for Aboyne, Banff, Inverurie and Meldrum, with the Kincardine & Mearns Community Council Forum and with the Peterhead Academy employability group. From the discussions held 51 responses to the same question asked in the on-line survey were gathered. 58.82% of respondents answered 'yes' and 41.17% answered 'no'.

Delivering the FBC Process – key activities

- 2.8 The development of the FBC is the third stage of Council's consideration of alternative delivery models. If members agree to proceed with this stage, it is anticipated that the FBC and any additional information will be presented to Council after the summer recess. If at that stage members decide to proceed with the company, there will be a further three months or so of implementation work prior to any transfer of responsibilities, currently anticipated to be possible on 1st January 2018.
- 2.9 There is a clear requirement for the FBC which members will consider in August/September to be rigorous, comprehensive and definite. To achieve this the Project Team will undertake key activities in preparation of the FBC, noted at 2.8 below. It is possible for these areas to be explored in principle, and for that process to deliver indicative answers and financial data. To provide definite and concrete information however, each of these activities needs to be undertaken. In order to expedite the programme it is proposed that a shell company be formed prior to FBC to facilitate applications to the external bodies detailed at 2.10 (e.g. OSCR, HMRC, NESPF). The Head of Legal would act as interim director of the company until such time as it may become operational when a full board would be appointed. The activities in themselves are not innately expensive nor do they commit the Council to any future course of action, they do however facilitate the most rigorous FBC to be presented to members.
- 2.10 The Project Board will undertake the key activities required in furtherance of the FBC development, which will include:
- Applying to the North east Scotland Pension Fund (NESPF) for admitted body status, and to quantify any difference in costs related to that change
 - Applying to the Office of the Scottish Charities Regulator (OSCR) for recognition as a Scottish Charity
 - Seeking recognition from Her Majesty's Revenue & Customs (HMRC) as a charity for VAT purposes
 - Engaging with the regional assessor to establish detailed agreement with regards to non-domestic rates relief
 - Incorporating the company and a trading company if appropriate to undertake non-charitable activities
- 2.11 The work-plan for the Project Board will include the following key activities:
- Staff engagement, community consultation and communication and engagement with external partners
 - Reviewing and detailing all services or facilities in-scope, and reviewing the financial implications as a result of 2.7 above
 - Considering staff implications
 - Drafting the management contract
 - Drafting the performance & scrutiny framework
 - Considering initial Business Support arrangements – eg Finance, ICT, HR, Maintenance & Hard FM and communications and catering
 - Establishing relationships with local and other partners
 - External funding / grant proposals

- Drafting a board structure, person specification for directors and recruitment procedures
- Considering the name of the company
- Considering the position of legal advice to the company if required

2.12 The Project Board considers much of the work can be undertaken with the expertise currently within the Council, however there is a requirement to enhance the capacity of services to undertake this work timeously, and, in some instances, to procure specific expertise externally. This work is estimated to require up to £130,000, which is not out of line with estimates in the Outline Business Case (OBC). If at FBC the Council were to decide to proceed to transfer the service to the company, there would be further implementation costs as outlined in the OBC.

2.13 The Head of Finance, Head of HR&OD and the Monitoring Officer within Business Services have been consulted in the preparation of this report and their observations have been included in the report.

3 Equalities, Staffing and Financial Implications

3.1 An equality impact assessment is not required because this report is focussed on the potential commissioning of further research and work in developing a Full Business Case around a proposal. If agreed the development of the FBC will require an equality impact assessment, the results of which will be included as appropriate, in a future report to Full Council.

3.2 There are no staffing implications arising directly from this report, however as noted above, the work required to develop the FBC may in itself be sufficient to cause concern to staff and a communication plan is in place to address this.

3.3 The FBC development work is anticipated to cost £130,000 over the financial years 2016/17 and 2017/18. This will be met from within existing resources.

3.4 Funding will, in the first place, be sought within the revenue budget. If required, additional funding will be sought from the appropriate committee in the course of the development.

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