

CABINET

16 February 2015

Title: Future Management Arrangements for the Council's Culture and Sport Services	
Report of the Leader of the Council	
Open Report with Exempt Appendix (2)	For Decision
Wards Affected: All	Key Decision: Yes
Report Author: Paul Hogan, Divisional Director of Culture and Sport	Contact Details: Tel: 020 8227 3576 E-mail: paul.hogan@lbbd.gov.uk
Accountable Divisional Director: Paul Hogan, Divisional Director of Culture and Sport	
Accountable Director: Anne Bristow, Corporate Director of Adult and Community Services	
Summary: As part of the 2015/16 budget round, Cabinet agreed (at its meeting on 16 December 2014) to a saving of £250,000 in 2015/16 rising to £1 million in 2016/17, which will be achieved by adopting a different management arrangement for the facilities and services provided by the Culture and Sport division. This report seeks authority for a new Trust (non-profit distributing organisation) to be set up and that a further report is presented to Cabinet to confirm the scope of services to be included, the expected outcomes and the financial arrangements.	
Recommendation(s) The Cabinet is asked to: (i) Consider the range of options available for the future management of culture and sport services; (ii) Agree in principle that culture and sport services will transfer to a new model of operation; (iii) Approve the formation of a Trust (non-profit distributing organisation) to deliver a range of health and wellbeing services; (iv) Agree that the Council will play an active part in the new Trust through nominations by the Leader of the Council to the Board of the Trust; (v) Agree that the Trust will become operational on or as soon as possible after 1 January 2016; (vi) Agree that one-off revenue expenditure of up to £250,000 is allocated from the	

£500,000 contingency identified within the use of General Fund reserves for invest to save initiatives by Cabinet in December to meet the legal and other costs associated with transferring the services to the new Trust; and

- (vii) Note that prior to implementation a further report will be presented to Cabinet setting out the services to be commissioned from the Trust, the expected outcomes and the financial arrangements.

Reason(s)

The proposal is intended to assist the Council in being 'a well run organisation' by making better use of its resources and assets. If implemented, existing facilities and services will be protected but will be delivered at a much lower cost. Also the new way of working that is proposed will enable the service to lever in additional income from grants that are not currently available to the Council.

The Culture and Sport division provides opportunities for social interaction, improving physical and emotional health, lifelong learning, and volunteering for the wider community.

In doing so, the division supports the achievement of the following Council priorities:

- **Encouraging civic pride:** Build pride, respect and cohesion across our borough; narrow the gap in attainment and realise high aspirations for every child; Build civic responsibility and help residents shape their quality of life.
- **Enabling social responsibility:** Ensure everyone can access good quality healthcare when they need it; Ensure children and young people are well-educated and realise their potential.
- **Growing the borough:** Support investment in housing, leisure, the creative industries and public spaces to enhance our environment.

1. Introduction and Background

1.1 The full extent of the facilities and services currently managed by the Culture and Sport division is set out at Appendix 1, which include:

- Operation of leisure centres
- Delivery of health improvement programmes for children and adults on behalf of the Public Health service: weight management, physical activity and smoking cessation programmes.
- Operation of libraries both directly managed and through community management arrangements.
- Operation of museums and management of archives.
- Delivery of culture and wellbeing programmes for older people.

1.2 The division also has responsibility for the development and delivery of the Borough's sport and physical activity, libraries, and heritage strategies.

- 1.3 The gross controllable expenditure budget for Culture and Sport in 2014/15 is £9.153 million. When income is taken into account, the net controllable budget for the service is £3.905 million.
- 1.4 Costs have been reduced by rationalising services and increasing income; for example, over the past three years the library service has achieved savings of £1.055 million and income at the leisure centres has risen from £2.3 million in 2007/8 to £3.7 million in 2013/14, an increase of £1.4 million, with further increases expected in the current year.
- 1.5 The division currently employs over 300 full time and part time staff.
- 1.6 There are currently over 30,000 active members of the library service. In 2013/14 our libraries had 1,330,708 individual visits for a library related purpose, which was the fourth highest out of the 15 library services in our CIPFA benchmarking group and higher than both Havering and Redbridge (Newham didn't participate).
- 1.7 Leisure centre usage has increased by 50% over the past five years rising to over 1.2 million visits in 2013/14. A recent report published by the Amateur Swimming Association stated that Becontree Heath Leisure Centre (BHLC) has the busiest swimming pool in the whole of the UK. The centre also secured the Amateur Swimming Association local pool operator of the year award in 2014.
- 1.8 Valence House Museum is accredited under the national museum accreditation scheme and has been recognised as 'one of best local history museums in London' by the Museum's Journal. It was featured in The Guardian's top fifty free things to do in London.

2.0 Proposals

Introduction

- 2.1 The current economic climate presents a significant and ongoing challenge for the Council. To achieve a balanced budget it has been necessary to review the range of services provided and explore alternative delivery options to safeguard services, which are valued by Members and residents, but also deliver cost savings and potentially act as a catalyst for business transformation.
- 2.2 An appraisal has been undertaken with specialist consultants to review the principal options available for the future delivery of the facilities and services provided by the Culture and Sport division. The options appraisal report is attached at Appendix 2, which is in the exempt section of the agenda due to the commercially sensitive nature of the information.
- 2.3 Additional external advice was also sought about the procurement options available to the Council and VAT implications.

Options appraisal

- 2.4 The appraisal identified four different but well established options that could be pursued by the Council:

- (a) transfer of services to an existing Not for Profit Distributing Organisation (NPDO), known typically as a trust;
- (b) transfer of services to a new trust specifically established for this purpose;
- (c) contract with a private sector provider; and
- (d) continuation of in-house management.

- 2.5 More recently there is increasing interest in the potential of Public Sector Mutuals to deliver local authority services. These have been described by HM Government as “an organisation that has spun out of the public sector, continues to deliver public services and involves a high degree of employee control”. Public sector workers have been given the right to form employee-owned co-operatives, social enterprises and charities.
- 2.6 For the purposes of this report, the benefits and disadvantages of a Mutual can be considered to be similar to those for a new NPDO/Trust. At this time there has been no interest expressed from the Culture and Sport staff team to actively pursue this type of operational model.
- 2.7 A high level financial model was developed to explore the impact each management option would have in terms of their potential to generate savings. These were considered alongside key non-financial criteria, such as: the ability to meet the strategic objectives of the Council; level of influence by the Council; alignment with the health and well being agenda; and impact on service levels.
- 2.8 This allowed an options appraisal to be undertaken by Culture and Sport managers with support from finance and procurement staff. The scoring between these options was relatively close, with a New NPDO (Trust) being ranked highest, followed by Existing NPDO (Trust), In House management and, finally, Private Sector provider.
- 2.9 The primary disadvantage of continuing with the current ‘in-house’ management option is that the taxation savings and reductions in NNDR (business rates) costs that could be achieved by a Trust model of operation are not available to the Council. Also a Trust model of operation would be able to access grant funding that is not available to the Council.
- 2.10 The same disadvantages would apply with a private sector operator. It is also likely that there would be little interest in operating heritage services because of the challenge of generating profit from the operation and its limited commercial potential. A key issue would be that the commercial operator will be looking to make a profit with profits going to shareholders rather than being re-invested in the services.
- 2.11 More information about the typical advantages and disadvantages of these service delivery models is set out at Appendix 3.
- 2.12 The options appraisal indicates that taking a balanced approach to financial and non-financial criteria, there is a strong indication that the facilities and services provided by the Council’s Culture and Sport division may sit best within a Trust model of operation.

Facilities and services to be transferred to the Trust

- 2.13 The range of services to be transferred will need to be adjusted in the light of decisions that were taken by Members as part of the 2015/16 budget round; however, this will not reduce the level of financial savings that is set out in this report.
- 2.14 These can be summarised as follows:
- The operation of the Broadway theatre will transfer to Barking and Dagenham College, via a lease arrangement, on 31 March 2015 or sooner.
 - The three remaining community halls in direct Council management (Fanshawe, Scrattons, and Galleon) will transfer into arms length community management arrangements, via long term leases during 2015. Also a community management arrangement is being established for the management of the Hedgecock Community Hall, which will be in place before the completion of this new facility.
 - When these leases are assigned the Culture and Sport division will have no further involvement in the management of the Broadway or community halls.
 - The budget that enables the direct delivery of the Home library Service by the Culture and Sport division has been deleted as a budget saving. This will mean that the service will end unless an alternative delivery model can be arranged during 2015.
- 2.15 As a result it is not appropriate to include these services in any new management arrangement that Members may adopt. Also whilst the volunteer management role is currently based within the Culture and Sport division, this is a departmental wide role and so should also not be in scope.
- 2.16 There are two main financial benefits that a trust would enjoy that are not currently available for a Council managed service:
- Relief on NNDR (business rates) – annual saving of **c£525,000** would be realised. This saving is based on the current portfolio of buildings being managed by the Council (excluding the Broadway theatre and Community Halls) and incorporates the impact on the business rates base being shared between the Council, the GLA and central government.
 - Different treatment of VAT – annual saving of **c£475,000** has been estimated based solely on the financial outturn for the leisure centres in 2013/14. It should be noted that it is expected that there will be a marked increase in income when the new leisure centre to replace Abbey Sports Centre opens in early 2015. It is not expected that this proposal will have an adverse impact on the Council's VAT partial exemption calculation.
- 2.17 There are also a number of additional and potentially significant opportunities for savings that a trust could bring:
- Whilst all existing Council employees who transfer to a trust will have the same terms and conditions of employment, the trust may want to consider different

terms and conditions and pension arrangements for new employees. However, the Council will require that the Local Living Wage, as a minimum salary, would continue to be paid for all staff.

- The Culture and Sport division has a strong track record of leveraging in external capital and revenue funding, c£500,000 or more each year; however, there are some potential funding sources that the service cannot tap into because applicants must be a registered charity. The proposed change in the way the service is being delivered will open up a whole host of new funding opportunities that will support the delivery of programmes that will help meet Council objectives.
- Partnership working through a 'confederation' model with neighbouring boroughs. This could see a locally focussed front line service managed and delivered in each borough but with the potential for back office support, like payroll and pool plant maintenance, to be shared across council boundaries to realise savings.
- In 2013/14 the support service re-charge to the Culture and Sport division was £1.535 million. The transfer of services to a trust could support the corporate centre over time to rationalise its services and cost base.

- 2.18 If for no other reason than the level of savings that would be realised from the different treatment of NNDR and VAT that would be realised from the leisure centres (c£700,000), it makes financial sense for these facilities to be transferred to a trust.
- 2.19 At the present time a range of healthy lifestyle programmes are commissioned through the Public Health grant and delivered by Culture and Sport . These include: smoking cessation, exercise on referral; child and adult weight management; disability sport and physical activity; creative programmes for people with mild and moderate depression.
- 2.20 It is proposed that these arrangements continue with a similar range of programmes being commissioned through a Trust. It should of course be recognised that over the commissioning cycle some services will cease and other services may be commissioned.
- 2.21 For the libraries and heritage services, the level of NNDR saving would be more modest. However, it is still considered appropriate to include these services within the scope of the trust.
- 2.22 This is because the Council has limited alternative options to realise savings from the Heritage Service:
- The Council operates Eastbury Manor House under the terms of a full repairing lease with the National Trust until 2038. The National Trust has categorically stated that it will not allow the Council to relinquish the lease nor will they accept changes to the legally binding operational responsibilities held by the Council.
 - The Heritage Lottery Fund (HLF) has invested £2.9 million to support the renovation of Eastbury Manor House and Valence House Museum. This investment legally commits the Council to manage and operate both venues to an agreed management plan for a period of 10 years and 25 years respectively. Any significant changes to the way that the venues are managed will require the

repayment of the HLF investment as well as the loss of the Borough's hard earned priority funding status.

- 2.23 This means that the Council could not close either Valence House Museum or Eastbury Manor House nor is significantly reducing the current level of operation to realise savings a viable option.
- 2.24 However, inclusion in the trust would provide the potential for the Heritage service as well as the Library service to make savings through the possible changes to terms and conditions of employment for new employees and to develop the services provided by accessing external funding opportunities that are not currently available to the Council. This would allow costs to be reduced but facilities and services to be protected and developed.
- 2.25 There are also close and effective working relationships between the Heritage and Library services and other elements of Culture and Sport division, in particular in the development of a cohesive health and wellbeing offer for older people and learning opportunities for children and young people.
- 2.26 Once a decision has been made on the proposed management arrangement for the Eastbury Manor House and the Valence House Museum, this will have to be formally agreed with both English Heritage and the Heritage Lottery Fund; however, it is not expected that this will be problematic.

Existing or new Trust

- 2.27 There are two options available to the Council in relation to a trust model of operation:
- (a) a new trust, which would be a non-profit distributing organisation (NPDO) in the form of a limited company with charitable status; or to
 - (b) an existing trust.

Procurement issues

- 2.28 Using a concession contract, which the Council's legal advisers have confirmed is permitted, the Council could transfer the management and operation of a range of facilities and services managed by the Culture and Sport division to a new trust or an already established trust without the requirement for a formal procurement process.
- 2.29 If Members were not minded to transfer the services to a new trust then there would be a strong argument that it would be in the best interests of the Council to test the market and appoint an operator via open competition. If this were to be the case a decision would have to be made as to whether an 'in house' bid would be considered as part of this process.

Financial implications

- 2.30 If considered in purely financial terms, the options appraisal indicates that there could be greater potential financial benefits to the Council if it transferred services to

an existing trust rather than a new one. Although this doesn't necessarily follow when financial and non-financial factors are considered together.

- 2.31 This is primarily because it has been assumed that the existing trust would make only very limited use, or no use at all, of the support services currently provided by the Council as it would already have existing arrangements in place. Whilst at least in the short term it is likely that the new trust will continue to use the Council's IT and finance systems and other services. This type of arrangement will provide the ability to manage a phased reduction in central support and management costs over time.
- 2.32 Also experience suggests that although an existing trust might not make use of the Council's support services this does not mean that this would result in a comparable level of 'cashable' saving by the Council. This is because it is unlikely to be possible to simply cut the expenditure on the services no longer required on a pro-rata basis due to the nature of the Council as a democratic organisation. Instead it will probably be the case that these costs will be spread across the Council.
- 2.33 It is undoubtedly the case that externalising the services via open competition would guarantee best value market price. The principal disadvantage of this is that it would be costly and that a detailed and time consuming specification would need to be produced.
- 2.34 Experience suggests that the transfer process to an existing trust would take longer, perhaps up to 18 months, rather than the 9 to 12 months anticipated for the concession contract to a new trust. This could mean that savings to the Council, would not start to be realised until around July 2016 but which have been budgeted for from January 2016. Also the level of saving and contractual commitment this option would bring to the Council would only be clear on the completion of the procurement process.

Operational implications

- 2.35 Currently there is not a developed market for managing the range of services provided by the Culture and Sport division through one entity. Whilst it is certainly the case that there would be significant interest from a variety of operators in taking over the highly efficient and effective leisure centre operation, there are very few operators who also have the same level of expertise and experience in delivering library and heritage services and, in particular, the extensive healthy lifestyle programmes being delivered by the Culture and Sport division.
- 2.36 It is important to note that the delivery of joined up 'prevention' services to the scale of those provided by the Culture and Sport division including smoking cessation, child and adult weight management, and physical activity programmes is not replicated across London or the South East. In recognition of this officers have made presentations to regional meetings of the Chief Cultural and Leisure Officers Association (cCLOA) about the innovative approach being taken in Barking and Dagenham.
- 2.37 Also Members would have to be satisfied that an established trust would be an effective option when there wouldn't be an existing relationship with the Council and its residents. The advantage of a new Trust would be that it will also provide

opportunities for Council nominees (both Members and officers) to be a part of the trust board, which will have Barking and Dagenham as its sole operational focus.

- 2.38 A further risk that any surpluses that may be generated in Barking and Dagenham will not then be retained to further reduce costs and to invest in the development of the service being provided to residents.

Conclusions and preferred option

- 2.39 If Members agree to the rationale for the scope of the services to be included in the Trust as set out above then there is not considered to be a compelling argument to procure the service on the open market.
- 2.40 When financial and non-financial factors are taken into account, the option to transfer services to a new trust is considered to be most appropriate on the basis of value for money, in particular the balance between financial performance and operational effectiveness.
- 2.41 It is also considered to provide the best option in terms of a service which is wholly focussed on serving the Borough and its residents.
- 2.42 This is the preferred option, which Members are recommended to approve.

3.0 Next steps

- 3.1 This report seeks a decision from Cabinet on the preferred delivery model for the future delivery of the Council's culture and sport services. However, prior to implementation, a further report will be presented to Members to secure approval on the scope of services to be transferred, service level and funding agreements, as well as governance and client management arrangements.
- 3.2 At this time the scope of facilities and services to be transferred to the Trust has focussed on those being delivered by the Culture and Sport division. However, it is recognised that it may be the case that it makes financial and/or operational sense to transfer other Council services to the Trust.
- 3.3 Further issues that will require clarification include the current role in managing a number of leases related to sports clubs and community organisations, such as the Sport House and the Eastbrook May and Baker sports club.
- 3.4 There will also be leasing and licensing arrangements for the buildings to be directly managed by the Trust. Early discussions will be required in relation to the Barking Learning Centre where there is a partnership agreement between the Council, Barking and Dagenham College and University of East London, who have separate leases for occupation.

4.0 Financial implications

Financial implications completed by: Roger Hampson, Group Manager – Finance

- 4.1 At its meeting on 16 December 2014, Cabinet agreed a saving proposal of £1m in a full year to be achieved by adopting a different management arrangement for the

facilities and services provided by the Culture and Sport division. New management arrangements were expected to be in place by January 2016 to generate a saving of £250,000 in 2015/16; this was on the assumption that it would not be necessary to undertake a formal tendering process.

- 4.2 If the services are transferred to a new Trust via a concession contract, the report seeks Cabinet approval to fund up to £250,000 from General Reserves to meet legal and other costs. In December, Cabinet agreed the use of £6.243m of reserves for the implementation of savings in 2015/16 and 2016/17. The Leisure Trust was not specifically included in this list but there was a contingency provision of £500,000 incorporated for 'other invest to save proposals where financial impact is unquantified' and it is recommended to allocate £250,000 from this provision.

5.0 Legal Implications

Implications completed by: Daniel Toohey, Principal Corporate Solicitor

- 5.1 The Council may set up a proposed leisure trust under Chapter 1 of Part 1 of the Localism Act 2011 or sections 19(1) and 19 (3) of the 1976 Act, and if applicable section 145 of the Local Government Act 1972, in conjunction with section 111 of the 1972 Act or both. Subject to compliance with State aid rules, the Council also has power to fund the proposed trust under sections 19(1) and 19 (3) of the 1976 Act, and if applicable section 145 of the Local Government Act 1972.
- 5.2 The trust will be providing the leisure service(s) set out in this report, via a service agreement that will be entered into by the Council. The contract for the provision of the service, unless it is a concession contract, must be advertised in OJEU (Europe-wide) and procured using a suitable procedure under that Directive.
- 5.3 This report however proposes the use of a service concession contract, which at present is exempt from the requirements of competitive tendering as set out in the Public Contract Regulations 2006. It should be noted that that position might change in the future with the implementation of Directive 2014/23 EU into English Law. That must occur before 18 April 2016, and in respect of which no plans for early implementation have been formally announced.
- 5.4 Legal Services support the use of a concession contract as set out in this report, subject to of course Legal Services working closely with the report authors to monitor any future change in the law that may impact upon the process.

6. Other Implications

6.1 Risk Management

- 6.2 There are a number of key risks associated with the transfer of the service to the Trust:

- The Council or subsequent elected Councils are of the view that they have little control over the Trust because the Trust has moved from a very close seamless working and policy development with the Council to a more distant, arms length relationship.
- The Trust doesn't meet the agreed financial targets.

- There could be further Government changes to the way that NNDR (business rates) is collected and apportioned by Councils or that they change the charities regulations so that facilities are not eligible for NNDR relief and the other benefits that go with charitable status.

- 6.3 Operating risks will be mitigated by ensuring strong financial controls, robust IT systems and high standards of corporate governance are in place. All Council services should have clear outcome specifications whether or not they are directly managed. The commissioning process should ensure that Members' requirements and expectations are delivered and provide appropriate mechanisms to exercise control over the delivery model.
- 6.4 Also regular financial monitoring by the Council will be essential. The Funding Agreement will stipulate that the Trust will provide the Council on a monthly basis with detailed income and cash flow statements as well as the requirement for the regular review of monthly financial reports and for appropriate action to be taken if adverse variances arise.
- 6.5 The length of the concession contract to be awarded and the duration and renewal arrangements of the funding agreement will be determined by the Council. This will allow the Members to terminate its funding agreement within a relatively short period of time if Members were dissatisfied with the way that services were being delivered.
- 6.6 The Culture and Sport management team has a strong track record in delivering services within committed revenue budgets, as well as increasing income and rationalising services to make savings. There is no reason why this would not continue under a Trust model of operation.
- 6.7 Also, although this report sets out a number of ways that savings could be realised from the new way of working that is proposed, the actual budgeted savings that has been agreed by Members relates solely to what will be realised from the different treatment of VAT and NNDR that would result from transferring services to a Trust.
- 6.8 Members can be confident, therefore, that the budgeted savings target will be achieved.
- 6.9 It will be important that there is a strong and clearly defined client function within the Council to ensure that the services provided by the Trust are closely aligned to the effective achievement of community priorities. The arrangements for this will be the subject of a further report to Cabinet.
- 6.10 Experience suggests that to establish a new Trust based on the current core services (leisure, heritage, and libraries) will take from 9 to 12 months depending on how much internal Council capacity was utilised for this purpose. The financial projections set out in this report are based on the new Trust becoming operational on 1 January 2016, which is challenging but achievable.
- 6.11 To ensure that that this tight timescale can be achieved, this report recommends that a budget of up £250,000 is approved to meet legal fees and other expenditure to establish a new limited company with charitable status, manage TUPE and

pension related arrangements and to finalise a robust Service Level and Funding Agreement that protects the interests of the Council.

6.12 Contractual issues

6.13 The legal implications section sets out the Council's powers in relation to this matter. Legal Services will be fully consulted and will prepare all the necessary legal documentation.

6.14 Staffing issues

6.15 As a general rule, the lease of any facilities to a Trust would trigger Transfer of Undertakings (Protection of Employment Regulations 2006 (TUPE)). All staff working at the facilities would transfer on existing terms and conditions of employment and there would be no break in their continuity of service. The position for support service staff involved with the delivery of service by the Culture and Sport division, but also working with other departments, such as finance and marketing, would depend on their individual circumstances.

6.16 As far as pensions are concerned, case law requires that the transferring employees be offered a 'comparable pension'. It is proposed that approval will be sought that the staff who transfer will be an 'admitted body' under the Local Government Pension Scheme.

6.17 If there is any underfunding of the pension scheme, arrangements will need to be made on transfer for some indemnity in favour of the Trust or that the funding arrangement for the Trust reflects the financial implications of recovering to a fully funded position.

6.18 It may be the case that the Trust will consider reviewing terms and conditions of employment and pension arrangements for new staff; however, it is intended that the Trust will be required to pay as a minimum the Local Living Wage.

6.19 Any organisational change of this significance will, of course, be of concern to staff. To help alleviate this, several briefing and consultation meetings have been held with staff and Trade Unions in line with the Council's change management policies.

6.20 If Members approve the establishment of the Trust, an employee representative from each of the key Culture and Sport services will be appointed to work with the management team to help ensure that the transfer arrangements are seamless and trouble free for the staff.

6.21 Customer impact

6.22 This proposal is intended to protect and improve cultural and wellbeing provision whilst delivering savings for the Council. The Trust will be wholly focussed on serving the Borough and its residents and so if this option is chosen it is not anticipated that there will be any adverse customer impact.

6.23 An equality impact assessment on this proposal was undertaken as part of the 2015/16 budget round. Once the scope of services to be transferred to the Trust has been finalised a new equality impact assessment will be undertaken, which will

be informed by consultation with stakeholders, service users and the wider community.

6.24 Crime and Disorder Issues

6.25 The Council has a statutory duty to consider crime and disorder implications in all of its decision making. It is expected that the Trust will provide a wide range of activities and quality facilities, which will provide positive activities for all residents.

6.26 Safeguarding Vulnerable Adults and Children

6.27 The Trust will be required to maintain robust safeguarding arrangements for vulnerable adults and children and the arrangements for this will be set out in the Service Level Agreement between the Council and the Trust.

6.28 Property/Asset issues

6.29 It is intended that the terms of the lease will require the Trust as lease holder to repair, maintain and insure the facilities included within the scope of the service.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

Appendix 1 Facilities and services managed by the Culture and Sport division

Appendix 2 Options appraisal (exempt information)

Appendix 3 Key features of the different management options