



To: Executive Councillor for Community Wellbeing:  
Councillor Sarah Brown  
Report by: Debbie Kaye, Head of Arts & Recreation  
Relevant committee: Community Services Scrutiny: 13/3/2014  
Wards affected: ALL

## **FUTURE MANAGEMENT ARRANGEMENTS FOR CAMBRIDGE FOLK FESTIVAL AND CAMBRIDGE CORN EXCHANGE**

### **1. Executive summary**

This report outlines a proposal to establish an alternative delivery mechanism for elements of the Arts & Recreation Service, namely the Cambridge Corn Exchange, Cambridge Folk Festival, and outdoor events. The report is based on a study completed by consultants Bates Wells Braithwaite, (BWB) in association with Festivals & Events International (FEI). Officers recommend a Trust is established on the basis of the business case and an analysis of the risks and benefits in relation to the options available to the Council. The report highlights the issues that will need to be addressed and a process for taking these forward.

### **2. Recommendations**

The Executive Councillor is recommended:

- 2.1 To approve in principle the establishment of a Trust to run Cambridge Corn Exchange, Cambridge Folk Festival and other events, and to authorise work to progress this, subject to further decisions required as part of recommendation 2.3 below.
- 2.2 To approve that a Working Group should be set up as outlined in section 3.10 to support the work involved in the implementation stage.
- 2.3 To agree that the following further work (see section 3.10) which has wider implications for the Council, is progressed in discussion with the relevant Directors and the Working Group prior to discussion at Strategy & Resources Scrutiny Committee and final authorisation by the Executive Councillor for Customer Services and Resources:
  - § Management of transfer of staff
  - § Funding Agreement
  - § Agreement of property, land use and other rights

§ Expectations and relationships between the Council and the Trust

- 2.4 To delegate authority for all other decisions necessary to implement and establish the Trust (including the appointment of a Chair) to the Director of Customer and Community Services in discussion with the Working Group.
- 2.5 To acknowledge the indicative timetable for implementation, and agree that this may be varied in accordance with the delegation in 2.4.
- 2.6 To bring forward proposals to the autumn 2014 committee cycle for a refreshed programme of outdoor events.

### **3. Background**

3.1 The Director of Customer & Community Services brought a report to the October 2013 meeting of the Community Services scrutiny committee to recommend the Council should consider the options for the future delivery of the Corn Exchange and events management, but in particular consider the merits of delivering services through an arms-length trust or company, and the benefits this might deliver. The Executive Councillor for Community Well-being subsequently resolved to agree that a range of options would be brought forward for transforming the delivery of Arts and Recreation and Community Development in the longer term.

3.2 The Arts & Recreation project has three objectives:

- § To reduce the subsidy required to these services.
- § To provide a sustainable financial and operational basis on which the services can thrive.
- § To manage and mitigate the increasing risk to the authority of continuing to provide the services directly.

3.3 A bid to the Council's efficiency fund for £25,000 was made to fund the first phase of the work which involved:

- § A review of the Council's options appraisal, and other professional advice and a recommendation of an optimum delivery model.
- § Preparation of a draft 5 year business plan to demonstrate the resilience of the chosen optimum model.
- § A full assessment of the risks and benefits involved should the Council go ahead with this decision.
- § An outline plan, timetable and budget to achieve implementation.

3.4 Officers undertook a procurement exercise to source an established and recognised firm in the legal field to provide professional advice and to secure industry-relevant expertise to inform and deliver the work. Bidders

were advised that the Council will make a decision as to whether to proceed to implement the chosen optimum model in March 2014.

The Council also sought a quote for an optional second phase of the project which would be to implement the recommended model and to fully establish a new entity and conclude all arrangements to secure successful transfer of services. No guarantee was given about a second phase and the Council reserved the right to choose whether or not to proceed with this work.

Following evaluation, the contract for phase 1 of the work was awarded to legal firm Bates Wells Braithwaite. Their bid for the work was £25,000. Their team included Festivals and Events International; (FEI) who had previously undertaken a review of Cambridge Folk Festival.

3.5 BWB completed the review of the options appraisal in November 2013. This was presented to the Strategic Leadership Team (SLT) and discussed with the Executive Councillor and Opposition Spokesperson. The benefits and risks of four shortlisted options were considered from a number of perspectives – corporate position, public perception, financial implications and service quality. The options were:

- § Do nothing – remain as is.
- § Stop all or some services.
- § Transfer both services to an NPDO (not for profit distributing organisation).
- § Transfer both services to a commercial operator.

3.6 Three other options had already been discounted:

- § A partnership with an existing organisation or Trust. This option was discounted for further study as we could not identify an organisation with a suitable 'fit'. Issues considered included scale of organisations, business synergy, geographic location and financial resilience.
- § Include in the leisure contract procurement. This option was ruled out because the procurement process was already well advanced and working to an implementation deadline of 1<sup>st</sup> October 2013.
- § Consider other Council services to partner with. This option was ruled out at this initial stage because the Arts & Recreation project is significantly more advanced in considering NPDO status. However, other services could be considered for inclusion at a later date.

3.7 The appraisal concluded that the transfer of services to an NPDO aligned most closely with the required objectives and that the most appropriate vehicle was a Charitable Trust limited by guarantee (referred to from hereon in as the Trust). Previously four independent consultants working on different projects had separately recommended that the Council considers a Trust arrangement for management of these services to deliver

financial and operational benefits. BWB were asked to proceed with the preparation of a business plan on this basis, and this is attached as a confidential appendix.

3.8 There are risks to the Council in not taking action.

3.8.1 The Folk Festival faces increasing financial risks

- § Meeting sponsorship and investment targets is increasingly challenging in the current climate. Ticket sales targets are based on a 100% predication and the Council budget approach requires a year on year increase in the net position.
- § In recent years performing artist fees have risen as recording revenue falls.
- § The economic downturn is creating an increasingly difficult business climate in an overcrowded and highly competitive festival market.

3.8.2 The A&R budgets are stretched in the current environment.

Since 2011/12, subsidy to the cultural element of the service area has been reduced by £350,000 per annum via restructuring and the introduction of more cost efficient and improved ways of working. By 2015/16 income targets will have increased by £150,000 per annum to reflect the new business approach to events in the Guildhall. The cumulative saving achieved in this area from 2011/12 to the end of 2014/15 will be £1,525,000.

The service now operates in an effective and streamlined manner however; the financial transformation has revealed a myriad of budget issues, many relating to historic, unachievable internal recharging targets. There are also deficits relating to inadequate provision for salary, NI and pension.

These shortfalls create a starting operational deficit of £180,000 and have only been covered in the current financial year through strict expenditure and vacancy management and one-off exceptional income items.

The Trust model will be better placed to address these issues. It will be able to take advantage of operating efficiencies, cost savings and income generating opportunities. These opportunities include taking the bar operation in house, and increased philanthropy and trust and foundation funding. The Trust business plan indicates that total income will increase by nearly £600,000 from £4,055,979 to £4,652,124 over the 5 year plan.

3.8.3 The risk profile for this area of activity is high, due to a high local and national public profile and financial volatility (the budgets rely on achieving over £4m income each year). Given the current financial position and constraints, the Council is not best placed to address these risks.

3.8.4 Citizens' Surveys show that residents support these services but challenge levels of subsidy and do not think the Council should necessarily run them directly.

### **3.9 Findings and implications of the BWB report**

3.9.1 The Value Added Tax Act of 1994 provides a list of activities which are tax-exempt including cultural services. One disadvantage of being tax-exempt from VAT is that a charity may not be able to recover the input tax on major expenses. The hypothesis has been that Cultural Exemption could be applied to a Trust to deliver significant savings in subsidy to the Council. The revised analysis indicates this is not the case. The hypothesis had been based on a study by VAT experts, Elysian. However, their findings were predicated on one year's budget forecast whereas BWB's full 5 year business case has been informed by 3 years actuals and has also included some business assumptions (Bar trading and philanthropy for example) that were not incorporated into Elysian's data.

BWB advise that on the basis of their work so far, the Trust should not apply Cultural Exemption at the outset. The rationale for this is that whilst it could deliver a small saving, there are risks in that:

- § The position is marginal and small changes to the business model may have a negative impact; and
- § It is difficult to reverse

The proposal is that this is revisited in due course. If Cultural Exemption is beneficial in the future, this could further reduce any subsidy contribution from the Council.

3.9.2 BWB advise that the business plan is cautious and based on existing budget lines. The budget would will be recalculated from a zero base as part of phase 2 of this project. Once operating independently as a Trust, BWB advise there is an expectation that some costs can reduce, and income levels, certainly through sponsorship and other fund raising under the charitable status, will rise.

#### **3.9.3 Operating saving**

BWB conclude that over the first five years, the Trust will require a cumulative annual reduction in operating subsidy of £50,000 from the Council from current levels, saving circa £500,000 over 5 years as the subsidy reduces from £350,000 to £150,000. Therefore there is a £200,000 saving on-going from Year 5 onwards from the Year 1 position. This does not take into account the start-up costs (a total of £200,000 see 3.9.4) nor the saving the Council will make in repair and renewals contributions (£138,000 per annum, see 3.9.5)

### 3.9.4 Start-up costs

BWB has estimated start-up costs at £163,000. We believe this is realistic and includes an allowance for restructuring, IT, re-branding, legal and project management with £115,000 incurred in 2014/15 (Year 0) and a provisional sum allocated of up to £48,000 for any management of change costs (MOC) in 2015/16. A breakdown is shown below.

<b>Expenditure</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>Total</b>
	Year -1	Year 0	Year 1	
Provisional MOC costs			48,000	
Communications and IT set up		30,000		
Efficiency Fund BWB legal/project management costs		65,000		
BWB Legal/project Management Contingency		20,000		
Efficiency Fund VAT work	4,730			
Efficiency Fund 1 <sup>st</sup> phase consultancy work	25,000			
Efficiency Fund Folk Festival consultancy work	7,500			
<b>Total</b>	<b>37,230</b>	<b>115,000</b>	<b>48,000</b>	<b>200,230</b>

£65,000 of Year 0 costs are covered via a bid to the Efficiency Fund and any contingency plus the contribution to the Trust of £30,000 will be made from Reserves – as a (repayable) in advance grant.

### 3.9.5 Overall savings position

In addition to the operating saving (see 3.9.3) there will also be an ongoing saving to the Council of £138,000 relating to provision of Repairs and Renewals funding (Annex 1). The table below shows that the set up costs including advances made by the efficiency fund will be paid back by the accumulated base budget savings achieved by the end of 2016/17. The total saving against base budget over 5 years is circa £990,000.

<b>Year</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16</b>	<b>16/17</b>	<b>17/18</b>	<b>18/19</b>	<b>19/20</b>	<b>Total</b>
	-1	0	1	2	3	4	5	
Anticipated subsidy	-	-	£ 350,000	£ 300,000	£ 250,000	£ 200,000	£ 150,000	
Operating saving	-	-	£ -	£ 50,000	£ 100,000	£ 150,000	£ 200,000	£ 500,000
Total set up costs	-£ 37,000	-£ 115,000	-£ 48,000	£ -	£ -	£ -	£ -	-£ 200,000
R&R saving to Council	-	-	£ 138,000	£ 138,000	£ 138,000	£ 138,000	£ 138,000	£ 690,000
<b>Total Base Budget Saving</b>	<b>-£ 37,000</b>	<b>-£ 115,000</b>	<b>£ 90,000</b>	<b>£ 188,000</b>	<b>£ 238,000</b>	<b>£ 288,000</b>	<b>£ 338,000</b>	<b>£ 990,000</b>

### 3.9.6 Pension arrangements

The start-up costs do not contain pension bond funding requirements, which will need to be established. The Support Services Manager has commissioned an assessment by the County Council of the LGPS requirements in relation to any transfer. This will establish the costs and risks that need to be addressed either by the Council, the Trust or both. Once this information is available, a discussion on the options will be held with the Director of Business Transformation and the Council's Section 151 Officer. They will consider any implications for the Council and the Trust business plan before a decision is made on the future approach. Recent experience with the leisure management contract suggests a bond insurance or underwriting of risk by the Council may be required.

### 3.9.7 Taxation

BWB recommend that at least initially, the Trust is a freely VAT charging and recovering entity. As a charitable operation, the Trust can be exempt from corporation tax. The business plan assumes that a trading subsidiary will gift aid all its profits to the Trust. Under gift aid, the Trust will be able to reclaim tax on donations, and higher rate income tax donors and reclaim tax. As a charity, the Trust will receive an 80% mandatory relief from business rates. It could apply to the Council for the other 20% discretionary relief. In line with the approach taken to The Junction, Kelsey Kerridge etc, the business plan makes an assumption this will be granted. This issue needs to be considered further in respect of whether there is a net cost to the Council, and also needs to be factored into the review of Grants taking place in 2014/15.

### 3.9.8 Staffing structure

The Trust will be responsible for establishing its own requirements for a staffing structure within the business plan parameters.

### 3.9.9 Outdoor events

BWB makes an assumption that all outdoor events including the Folk Festival can be run by the Trust, and there is an adequate resource set aside in the business plan to deliver this. However, the amount is shown separately to enable the Council to consider its future requirements. Officers will bring forward proposals to the autumn 2014 committee cycle for a refreshed programme of outdoor events.

### 3.9.10 Recharges

BWB estimated that if these activities move outside the Council, almost £600,000 of the total of £812,000 eligible central recharges are potentially surplus to requirements. The Director of Business Transformation has advised that the issue could be managed in the short to medium term by a Transitional Service Agreement (TSA). This approach will spell out the

services to be delivered to and paid for by the Trust over a reasonable period of time and enable a managed transition from the current model to the new one. The planned transition will manage risk, provide continuity of service and provide a clear method to achieve optimum outcomes for both the Trust and the Council. The work to develop the TSA has begun with a review of the profile of the current recharges to what would be the future Trust. This work is being carried out by Accountancy in conjunction with a broader review of the system of recharges within the Council. The initial work to develop the Trusts re-profiled charges will be completed shortly.

### 3.9.11 Property

The business plan makes an assumption the Council will charge a peppercorn rent to the Trust for use of the Corn Exchange and Guildhalls. This will need to be reviewed once the corporate work on recharges has taken place.

### 3.9.12 Risk benefit analysis

This is covered in section 2 of the BWB report. The key points are:

#### Benefits

- § The services will cost less to operate as a Trust outside the Council.
- § The Trust will be able to operate more flexibly outside the Council leading to cost savings and income opportunities.
- § There is an opportunity to review the other outdoor events.
- § There will continue to be a close relationship between the Council and the Trust.

#### Risks

- § An appropriate Chair and senior staff will need to be appointed in a timely manner.
- § The Business Plan assumptions may need modification when the zero base budgeting exercise is completed in Phase 2.
- § The Trust may be insufficiently resilient to deliver against the proposed business plan.

## **3.10 Phase Two - Key tasks and proposed approach**

Items marked \* will be subject to a further decision by the Executive Councillor for Customer Services & Resources following scrutiny by Strategy and Resources Committee.

3.10.1 BWB proposes a timetable which enables the Trust to be established and operational by 1<sup>st</sup> April 2015.

Action	Proposed completion date
Recruit Chair and establish Working Group	01/05/14
Incorporate Trust	01/06/14
Principal terms agreed for Property Leases, Transfer	



Agreement and Funding Agreement.	20/06/14
Complete zero-based budget and financial reporting structure	20/06/14
Strategy and Resources Scrutiny Committee	14/07/14
Charity registration complete	01/10/14
Managing Director in place <sup>1</sup>	01/10/14
Full Board appointments completed	01/02/15
Documentations for Leases and Agreements complete	01/03/15
Trust formally begins trading	31/03/15
Staff transfer	1/04/15

### 3.10.2 Appointment of a Working Group

A Working Group will be appointed as soon as possible and will have the following representation:

- § Executive Councillor (and one other nominated representative).
- § Opposition Spokesperson (and one other nominated representative).
- § Director of Customer & Community Services.
- § Head of Arts and Recreation.
- § Peer representative(s) for example, Arts Council, other cultural organisations.
- § Consultants (BWB/FEI).
- § Other invitees as appropriate

### 3.10.3 Appointment of a Chair

A Chair will need to be identified before the Trust is constituted as he/she will need to lead the organisation through its crucial set up phase including appointing the Managing Director and liaison with the Council to agree financial, legal, property and TUPE arrangements. It is proposed that the new Chair will be appointed by the Director of Customer & Community Services in consultation with the Working Group. With support from the Working Group, the Chair will begin the process of establishing a Board. It is anticipated that the full Board will be in place and take over from the Working Group at least two months before the Trust begins trading.

### 3.10.4 Governance arrangements

The BWB report recommends that the Trust be set up as a charitable company limited by guarantee with a wholly owned subsidiary trading company to undertake commercial activity. The governing body will be both company directors and charity trustees and will collectively be known as the Board. BWB recommend a board of not more than 12 people, with a broad range of skills, knowledge and influence, particularly in the areas of finance, law, fundraising and marketing.

---

<sup>1</sup> Subject to consideration of employment arrangements; may require advance grant  
Report Page No: 9

BWB recommend that the Council has the right to nominate 2 members of the full Board (a maximum of 20% of the Board so as to ensure that the Trust is not a Controlled Company or an Influenced Company at any time under the terms of the Local Authorities (Companies) Order 1995).

#### 3.10.5 Management of transfer of staff and associated issues\*

The Trust will need to create a staff structure suitable for its operation, and this may vary from the current staff structure. Staff assigned to the services to be transferred would be transferred to the Trust under Transfer of Undertakings (Protection of Employment) Regulations (TUPE) Some new posts may be created and could be recruited to externally. The process will include the following components:

- § TUPE consultation.
- § Proposed Measures consultation prior to transfer.
- § Clarification on arrangements for pensions, ring-fence, Trade Union recognition and representation, and Living Wage.

#### 3.10.6 Financial arrangements\*

The Business Plan produced by BWB in phase 1 is an indicative budget based on 3 years actual results extracted from Council management accounts. The report recommends that a zero-based budget process is undertaken as part of Phase 2 to confirm these numbers and to provide both the Council and the Trust with the most realistic financial picture.

#### 3.10.7 Property, land use and rights\*

The BWB report anticipates that there will be leases between the Council and the Trust covering use of the Corn Exchange, Box Office premises and Parsons Court and Guildhall Halls which will include a service level agreement ('SLA'), outlining the service to be provided.

There will be a separate agreement under which the Trust is granted the right to run the Folk Festival and to use its Trademark and the right to use the Folk Festival site at Cherry Hinton Hall. It is also anticipated that there will be a Transfer Agreement that will detail the arrangements for the transfer of assets to the Trust and the future arrangements for the use of Repairs and Renewals funding.

Council Officers will work closely with the Chair and Working Group to ensure details are agreed. Principal terms should be agreed in July, draft agreements in place by 1<sup>st</sup> January 2015 with final documentation complete by 1<sup>st</sup> March 2015.

#### 3.10.8 Expectations and relationships between the Council and the Trust\*

The Council will require a Service Level Agreement with the Trust to support funding arrangements. This will set out the Council's requirements and expectations, grant level and duration, options for variation etc.

## 4. Implications

### (a) Financial Implications

The BWB business plan indicates a total of £500,000 will be saved through reduced subsidy from the Council over the first 5 years. In addition the Council will save a further £690,000 through the Trust taking over responsibility for repairs and renewals provision. With start-up costs estimated at £200,000 the total saving over five years will be circa £990,000. However, this does not include transitional arrangements for withdrawal from Council recharges. From 2019/20 onwards, the Trust will require a maximum subsidy of £150,000 per year. This may be reduced if the Trust cannot demonstrate a need for a subsidy.

Other Council services considering arm's length arrangements.

Discussion has been held with the Head of Tourism & City Centre Management about the synergy between this projects and her work in considering a sustainable arm's length model for the future delivery of tourism. Because of the advanced nature of the cultural trust project, and uncertainty over the 'fit' with other areas, a joint approach is not being pursued at the current time.

### (b) Staffing Implications

If a decision is made to set up the Trust and transfer services, staff assigned to services that move to the Trust will transfer to the Trust under TUPE. An initial TUPE consultation process will begin with the unions, those employees who are to be transferred, and those employees who will not transfer but whose job may be affected. Approximately 35 members of staff may be impacted by the proposal.

### (c) Equal Opportunities Implications

An Equalities Impact Assessment was undertaken in January 2014 (summary; full version attached as an appendix).

Age: Concern has been expressed by staff about how their pensions would be affected in any change. This is being explored and will be discussed with Trade Unions and staff at an early stage.

Disability: Opportunity to engage in the process if absent from work. Members of staff are being kept informed by a mixture of briefings from the Head of Service, emails from the Head of Service, and updates from managers at team meetings. Any formal consultation will include measures to ensure anyone with a disability has appropriate opportunity and support to participate. Any members of staff on long term absence or sick leave will be fully consulted and kept fully informed.

Pregnancy & maternity: Opportunity to engage in the process. Staff may be pregnant, or on maternity or adoption leave during transfer period. Employees will be kept fully informed and offered opportunity to engage in the processes.

Other factors that may lead to inequality: The services currently run by the Council are tasked to be responsive and promote access to a broad section of the community. In any legal agreement with a new entity, there should be an expectation that programming policy should continue to reflect the diversity of the city and that wherever feasible, options for pricing policy considered to promote access to services for people on lower incomes.

(d) **Environmental Implications** - None

**(e) Procurement**

The Council may need to consider procurement issues in relation to future provision for outdoor events if they are not transferred to the Trust.

**(f) Consultation and communication**

- § A corporate project team has been established to work on this project, and detailed consultation undertaken with HR, Legal Services, Property Services, Accountancy and Support Services.
- § Arts & Recreation staff have had the opportunity to attend regular staff briefings and have received updates via email.
- § Staff attended a session to discuss a possible vision for the new Trust.
- § A briefing has been held for elected members.
- § Trade Unions have been briefed on the proposals to date.
- § A letter and copy of this report will be emailed and posted to staff on long term absence.

**(g) Community Safety** - None

**5. Background papers**

BWB report (Exempt Report)

**6. Appendices**

- § EQIA

**7. Inspection of papers**

To inspect the background papers or if you have a query on the report please contact:

Author's Name: Debbie Kaye  
Author's Phone Number: 01223 – 457551  
Author's Email: [debbie.kaye@cambridge.gov.uk](mailto:debbie.kaye@cambridge.gov.uk)

## Annex 1

### **Immediate savings arising from creation of a Cultural Trust.**

As detailed in 3.9.9, discussions are underway to inform how best savings can be generated through a reduction in central and other recharges left behind by the Trust. However, there is an area where the Council will make immediate savings from the creation of a Cultural Trust namely, Repairs & Renewals (R&R) contributions. This provides on-going savings with a cumulative savings impact and can be used by the Council to repay the start-up costs and advances made by the Chief Executive's Efficiency Fund.

The R&R contributions will not be required because the office and operational equipment maintenance and replacement together with the internal repairs liability will move from the Council to the Cultural Trust. There are also small contributions to the Civic Rooms and also Parsons Court roadway.

Over a period of two years the Council will make cumulative savings of £276,080 (excluding inflation allowance into 2015/16 and 2016/17)

#### **Budget (Base: 2014/15)**

	£
Repairs & Renewals	
Office Equipment	18,950
Operational Equipment	66,720
Premises (Internal)	48,560
Guildhall Civic Rooms	3,070
Parson's Court Roadway	740
Ongoing savings - R&R	<b>138,040</b>