

Cabinet

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Management Options Appraisal – Culture and Sport



MTFP: NS20

Report of Corporate Management Team

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Purpose

- 1 The purpose of this report is to provide an update on the 'Trust' project for Culture and Sports Services. The report confirms the implications of the Localisation of Business Rates, which comes into effect from 1 April 2013, and sets out the potential implications with regards to the Culture and Sports Services 'Trust' option business case.
- 2 The report has been prepared in view of the project having to pause to consider the Government's proposed changes to the business rates system and provides an opportunity to consider the future status of the project, given the MTFP savings targets of £866k in 2012/13 and 2013/14 and beyond .

Background

- 3 The Council's Medium Term Financial Plans 2 and 3 include a number of savings proposals linked to the Management Options Appraisal (MOA) process. The principal aim of the MOA was to identify future management arrangements best suited to providing optimal value for money, whilst still meeting the Council's strategic priorities in service provision.
- 4 The services originally included within the scope of the project were Sport and Leisure Services (Neighbourhood Services) and Cultural, Library Services (Adults, Wellbeing and Health) and Outdoor Learning Centres (Children & Young People's Services). All these service now reside within the newly formed Culture and Sports Services grouping within Neighbourhood Services, with the exception of Outdoor Learning Centres.
- 5 The assumed Medium Term Financial Plan (MTFP) savings linked to the project total £865,897; consisting of £615,897 Sport and Leisure (NS20 - £369k in 2012/13; and £247K in 2013/14); and £250,000 Libraries and Culture (originally within the Adults Wellbeing and Health proposals (AWH 10 and AHW 23 – all assumed in 2014/15). Following the corporate management team restructure, the cultural and library services have now been transferred to Neighbourhood Services, together with all linked MTFP saving targets.

- 6 Following a review of a range of management options, an ‘in principle’ decision was taken by Cabinet in January 2012 to transfer some or all of these services to a Trust subject to further modelling.

The report identified the potential impact on mandatory rate relief from the Government’s proposals on the localisation of business rates had become uncertain at that time due to proposed government changes.

- 7 The January 2012 report tasked the project to provide a further update on the project in autumn 2012. It was originally envisaged that this update would have focused on more detailed issues around staffing, business planning and procurement matters, in order to facilitate a firm commitment to the transfer of services. The project has, however, been delayed to consider the government’s proposals on the localisation of business rates. This report now focuses on the outcome of this and its implication for the future of the project.

Original National Non Domestic Rates (NNDR) savings forecast

- 8 When the MOA project commenced, it was anticipated that the mandatory relief of 80% of NNDR costs would be available on all property facilities included in the scope of the project and vested in the Trust.
- 9 MTFP savings associated with the project were therefore premised on the savings likely to be achieved through mandatory NNDR relief. The assumption was that the NNDR savings would be top-sliced from any contract payment to the Trust, with the Council benefiting from this relief at no expense to the Trust as they would qualify for the corresponding amount in mandatory NNDR relief. The following table shows the current NNDR budgets and original anticipated savings from the Trust model.

Table 1: Original NNDR costs and savings for a Trust model

	2011/12 Budgeted full NNDR Costs	Trust Saving @ 80%
	£	£
Sport & Leisure	760,280	608,224
Culture	79,430	63,544
Libraries	267,765	214,212
Teesdale Outdoor Learning Centre	2,000	1,600
TOTAL	1,109,475	887,580

- 10 As noted earlier, the MTFP includes saving requirements totalling £865,897 (£615,897 Sports and Leisure, £250,000 Libraries and Culture) from the MOA. This was broadly in line with the savings expectations under the Trust delivery model.

Localisation of Business Rates – The Business Rates Retention Scheme

- 11 The Government published a consultation paper on its proposals for the localisation of business rates – the Business Rates Retention Scheme (BRRS) - in autumn 2011. The Government’s response to this initial consultation process was published in December 2011 and contained a range of commitments:
- 12 Based on the initial soundings from the National Working Groups and in light of the action taken by other authorities who had been developing similar

proposals, the decision was taken to defer development of the MOA in April 2012, pending further clarity over the calculation of business rates income for the purposes of determining the local and central shares under the BRRS. The concern at that stage being that the mandatory rate relief reductions could be offset 100% by a reduction in retained business rates – effectively producing no savings to the Council from the development of a trust.

- 13 On 17 May 2012 the Government published a ‘Statement of Intent’ in relation to the Business Rate Retention Scheme (BRRS) which included the following indications:
- a) That the ‘local share’ would be 50% i.e. the Council would retain 50% of business rates collected, with the Government retaining the remaining 50% as a ‘central share’;
 - b) the retention of a 50% ‘central share’ by Government would result in councils having to continue to receive Revenue Support Grant to ensure the initial baseline funding level is maintained;
 - c) The Government would introduce a ‘safety net’ if Councils’ baseline funding significantly reduced. At the present time, the Government is expecting the safety net to be accessed if an authority’s baseline funding reduces by around 10% due to a reduction in business rate income in any one year. It would be highly unlikely that Durham County Council would ever meet this criterion due to the low level of ‘local share’ rate retention compared to the baseline funding level;
 - d) A number of other funding streams are to be included in the BRRS in addition to the current level of Formula Grant e.g. Early Intervention Grant, Learning Disability and Health Reform Grant and Council Tax Support Grant. The impact on Durham is currently being analysed.
- 14 The Government published its response to the consultation on the BRRS on 17 July 2012. The consultation provides an indication of how baseline funding levels will be calculated and also how the BRRS will work in the future. This consultation document confirms a number of the points identified above.

Revisiting the Business Case

- 15 As a result is now clear that under the BRRS, the Council would benefit by only the 50% of the costs of mandatory relief that would be met by Government, based on the 50% local / central share calculation. So, whilst originally it was anticipated that the savings would be circa £888k and there was concern that this would be completely removed, it is likely that 50% (c£444k) could still be realised.
- 16 Although clearly not as attractive as originally identified within the original business case, a benefit of £444k is not insignificant, particularly when considered that there should be no negative service implications from achieving the saving. This would leave a shortfall of £422k against the original MTFP target.
- 17 The MTFP 2 and 3 savings associated with the project was due to be realised from September 2012 and the delay in this project is causing cash limit pressure in Neighbourhood Services in 2012/13 of c£369k.

- 18 This is being mitigated by the use of Neighbourhood Services's cash limit reserves in year, however, the position will be exacerbated in April 2013 when the remaining elements relating to leisure and library and cultural service savings are applied to the budgets and post Trust assumed savings start to be factored in. Total budget pressures will be c£866k next year if the Trust does not go ahead or alternative proposals are not found.
- 19 Alternative proposals are not being developed / brought forward by Neighbourhood Services at this stage, pending a final decision on the MOA.

Financial Viability of the Trust

- 20 In addition to the NNDR savings, the MOA business case (presented to Cabinet January 2012) highlighted that there were net VAT benefits available to the Trust post transfer.
- 21 These VAT benefits arise because within a Charitable Trust, the majority of fees and charges are VAT exempt, allowing the Trust to charge the same fees as previously without having to pass on VAT to HM Revenues and Customs; essentially gaining 20% of all fees not previously exempt while the services were provided by the Council. The two main streams of income that could deliver a VAT gain would be sporting activities and cultural admissions. This would be offset in part by unrecoverable VAT on expenditure.
- 22 Officers, working with the advisers and with in-house VAT officers at the time, determined that the potential net VAT gain may be in the region of £450k, based upon an output tax VAT gain of £1.07m and a non-recoverable input tax VAT loss of £617k.
- 23 The original business case assumed that this additional capacity would be retained within the Trust to establish / strengthen areas such as marketing and promotion and provide an operating budget surplus / contingency. This was seen as vital to ensure financial stability and viability of what would be one of the largest and most diverse Trusts in the Country.
- 24 The project team are now preparing a robust business plan and working to ensure that the staff, legal issues and corporate impact matters have been adequately dealt with, together with the confirmation of financial savings. This information, together with a Service Delivery Plan, will form the basis of a future report on the decision to transfer.
- 25 The challenge of delivering efficiencies from the project have been increased as a result of the changes to the Localisation of Business Rates. Any potential trust will need to explore wider means by which to achieve these and bring the full force of the flexibility and operating environment such a vehicle provides in achieving these.

Project Delivery

- 26 The original business case proposed that the Council procured dedicated external project management and legal / technical support to establish a robust business plan and deliver the Trust, at an estimated cost of c£200k. There is already an internal project team in place reporting to a Project Board, chaired by the Corporate Director, Neighbourhood Services.

- 27 At this stage further work undertaken with regards to the Trust would have a number of costs, potentially abortive, that would need to be incurred. It is estimated that these costs would be c£100 -150k prior to reporting back for a final decision to transfer and incurring additional legal costs in setting up the transfer agreement etc.
- 28 An element of this work may be abortive if the Trust did not subsequently proceed, however, much of the business planning work would be of benefit to the service if retained.

Future MTFP Savings Requirements

- 29 Further savings proposals of c£700k are factored into the Neighbourhood Services MTFP relating to these services post transfer, through restructuring, additional income assumptions and consequential reductions in the contract payments made to the Trust.
- 30 The Trust would have been anticipating to achieve these efficiencies and it is expected that these requirements will be embodied within the arrangements. This would essentially mean that the level and profile of funding to the new entity would reflect not only the savings associated with the MOA project but all related MTFP savings.
- 31 The ability of the Trust to achieve these savings plus the shortfall of c£422k arising from the original set up savings assumptions from NNDR is something that will need to be demonstrated within any proposed business plan. It could be that the Trust may be better placed to deliver these savings given the additional freedoms and flexibilities and access to other funding streams it would have?

Wider benefits of the trust option

- 32 Whilst the main concern of this report has been the financial implications of the BRRS it should be remembered that in making the 'in principle' decision to create a trust, in January 2012, Members considered a wider range of benefits. Not least amongst these was that such an organisation could not distribute any surplus or profit it generates, rather it is restricted to reinvesting its resources to furthering its objectives. In other words, any surplus **must** be used to re-invest in service provision. Other advantages of an trust are set out below;
- Single focused body with unitary purpose
 - Opportunity for community involvement in the management of the non-profit distribution organisation (NPDO)
 - Ability to harness the various "Friends Of" organisations to enhance volunteering, fundraising and community initiatives
 - Potential to access private finance for improving and enhancing any of the facilities
 - A new NPDO would be the only option which would potentially involve a buy-back of any services from Durham County Council
 - A NPDO could benefit from the pooled experience of staff currently working within the portfolio and Leisureworks if they merge with the NPDO

- A new NPDO would be “owned” by those committed to County Durham and the delivery of the services
- A NPDO can borrow to invest and improve the facilities outside the local government finance requirements
- A new NPDO could become a strategic partner of the Council and take a leading role in the Durham Cultural Partnership
- This governance model has a proven track record and can develop collaborative working at regional, national and international levels
- Range of fiscal advantages including exemption for corporation tax, opportunity for corporate sponsorship and donations utilising gift aid.
- Greater access for National Lottery funding which is increasingly being directed away from local authorities.
- County-wide NPDO will offer opportunities to attract contracts from commissioning bodies in public health through both arts and physical activity.
- Access to other sources of funding for charities not available to the public sector from national charitable foundations.

Conclusion and next steps

- 33 The Trust project has been held up while the outcome of the BRRS was determined. As a result 2012/13 budget pressures (c£366k) are being offset by use of cash limit reserves, but this is not a sustainable position going forward.
- 34 Full year savings of c£866k will manifest themselves as a base budget pressure in 2013/14 if the Trust is not set-up by 1 April 2013. Procurement timescales (if a full EU compliant tender process is followed) would mean that it would be highly unlikely that 1 April 2013 would be a realistic timescale and therefore there will be inevitable cost pressures next year.
- 35 NNDR savings will only be 50% of the original anticipated savings in creating a trust, realising c£444k savings, leaving a permanent MTFP savings shortfall of £422k. This would need to be mitigated in 2013/14 and any trust’s delivery plan’ would need to demonstrate how these costs would be mitigated.
- 36 VAT advantages of the trust model will contribute to achieving the required saving. The initial calculation of actual VAT benefits (estimated at a net £450k) and utilisation of these sums by a Trust to deliver future MTFP requires further exploration.
- 37 The trust project is now back on-line and the project team are beginning preparation of a robust business plan setting out how all efficiency, staffing, legal and procurement issues will be addressed. This information, together with a Service Delivery Plan, will form the basis of a future report.

Recommendation

38 It is recommended that Cabinet endorse:

- a) Continuation of the 'Trust' project and the reconvening of the project board and working groups with a view to:
 - i. Establishing a charitable trust for Culture and Sports Services
 - ii. Realising the full MTFP saving previously associated with the project (£865,897) together with all other MTFP savings identified against the services to transfer.
- b) Slippage cost associated with the saving are met in 12/13 from Neighbourhood Services cash limit reserves and in 13/14 from corporate reserves.
- c) A further update report on the project is developed at the earliest opportunity once the project has reconvened.

Background papers

- Durham County Council, Management Options Appraisal Report January 2012
- Durham County Council, Management Options Appraisal; Winckworth Sherwood 2011
- Medium Term Financial Plan 2011/12 to 2014/15
- Inspire and Transform: Cultural Strategy for County Durham 2010-2013 (approved by Cabinet 16/06/2011)
- Durham County Council: Sport and Leisure Service Strategy 2010-2013 (approved by Cabinet 02/03/2011)

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Appendix 1: Implications

Finance

Contained in the main body of the report

Staffing

As a general rule the lease of any facilities to a trust would trigger Transfer of Undertakings (Protection of Employment) Regulations 1981 ("TUPE"). In such a case, all staff within scope would transfer on existing terms and conditions and there would be no break in their continuity of service. This would include any revised terms and conditions the subject of single status proposals. The position for other staff involved with the facilities, but working with other departments, would depend on their individual circumstances.

The Service will work closely with representatives from the HR Team to ensure that all affected employees and the trade unions are fully engaged in the consultation processes associated with these proposals, and that the Council's Change Management protocols are adhered to in this regard.

Risk

A comprehensive risk assessment has been developed in relation to this project.

Equality and Diversity / Public Sector Equality Duty

An initial equality impact assessment has been undertaken and will be developed further as the project develops. Any potential impacts on service delivery and staff will be included in a final impact assessment to inform future decision making, essentially we would need to ensure that safeguards are in place to meet our responsibilities under the Public Sector Equality Duty alongside the general provisions of the Equality Act 2010

Accommodation

Whilst those services within the scope of this project currently run and manage a large number of buildings it is anticipated, at this stage that the Council will enter into long term leases with any new entity. It is further envisaged that the Council will retain repair and maintenance responsibility. Although it may be determined that some elements of work, small works and repairs together with internal presentation issues, will pass to the new organisations.

In general terms, however, the Council will still need to make provision on both a revenue and capital basis for the upkeep of the buildings. So whilst in future there may be the opportunity for investment from the new organisation in relation to this, in the short term there will be no savings to be achieved from this area of expenditure; similarly there will be no additional cost either.

Crime and Disorder

None

Human Rights

None

Consultation

It is not anticipated that public consultation will be undertaken in relation to any transfer, as there would be no changes to the level of service, as a direct result.

Consultation with Members will be undertaken via the Overview and Scrutiny process together with Member workshops.

Staff consultation will take place in line with the management of change toolkit.

Procurement

The Authority is required to consider the procurement issues associated with this project. The portfolio is made up of Part B services. Under the Public Procurement Regulations there is no need to advertise these services nor carry out a competitive tender exercise. However, case law in this area has highlighted the principles of the Treaty of Rome and there is an underlying expectation in the body of case law that for contracts outside the provision of the regulations, advertising of such contracts may be required to comply with those principles. The specific procurement route will be determined in the next phase of the project.

Disability Issues

None

Legal Implications

Durham County Council has a number of powers through which it can manage or outsource the services and facilities within the scope of the MOA. The key powers, which include an ability to provide grant aid, were given full in the January 2012 Cabinet report.