

North Lanarkshire Council

Report

Policy & Strategy Committee

approval noting

Ref LMCM/EW

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The Plan for North Lanarkshire – Operational Delivery of Culture, Sport and Leisure Services

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Executive Summary

This report presents to the Policy & Strategy Committee a re-examination of the case for either retention of the ALEO vehicle, Culture and Leisure NL (CLNL), or the insourcing of direct delivery of Culture, Sport and Leisure services currently provided by CLNL under the terms of a Services Agreement, to North Lanarkshire Council.

The focus of the report is:-

- (1) the required alignment of the ALEO's strategic and operational planning with The Plan for North Lanarkshire, exploring the implications of the depth and pace of transformational change required;
- (2) review of progress against the CLNL integration plan aims;
- (3) emerging evidence of the governance challenges inherent in the CLNL ALEO vehicle and the potential impact of this on the delivery of The Plan for North Lanarkshire priorities;
- (4) a re-examination of the original option appraisal and risk assessment as presented to Committee in January 2017 and September 2018 that informed the decision to merge Culture NL and North Lanarkshire Leisure factoring in the Council's Financial Strategy and the emerging challenges that this may present to the sustainability of the vehicle;
- (5) an overview of in-sourcing mechanics and financial impact;
- (6) the pressing need to address harmonisation of terms and conditions of employment; and
- (7) the Council's commitment to realise ambitious large scale regeneration projects brings fresh opportunities. This will demand service delivery models which require to operate with a focus on The Plan for North Lanarkshire.

The Best Value Assurance Report on North Lanarkshire Council, prepared by Audit Scotland in May 2019, on behalf of the Accounts Commission states in its findings:-

“We commend the ambitions and well-articulated vision of the council and its partners in their ‘Plan for North Lanarkshire’. Realising this vision would lead to significant regeneration and change in North Lanarkshire.

Good leadership, governance and planning will be crucial for the Council in such delivery.”

To reflect not only the challenges and opportunities, but also the shift in the Council's strategic and financial position since the original pre-merger Options Appraisal and Risk Assessment were carried out, updated desktop Options Appraisal and Risk Assessments have been carried out to reflect the significance of securing alignment of the operational delivery of culture, sport and leisure services with The Plan for North Lanarkshire's strategic objectives, financial planning priorities, and Programme of Work. Copies of the updated Options Appraisal and Risk Assessment are included in Appendices 1 and 2.

Recommendations

The Policy and Strategy Committee is recommended to:-

- (1) note the outcome of the updated Options Appraisal and Risk Assessment in line with the Plan for North Lanarkshire (Appendices 1 and 2 refer);
- (2) consider and determine whether to:
 - (a) maintain the current ALEO model; or
 - (b) insource the delivery of Culture, Sport and Leisure services delivered by Culture and Leisure NL
- (3) in accordance with the recommendation in 2(b) as appropriate:
 - (a) instruct the Chief Executive to prepare and implement a detailed insourcing plan; and
 - (b) agree that the Head of Legal and Democratic Solutions is authorised, in so far as not already authorised in the Council's Scheme of Delegations to Officers, to progress the preparation and execute all resolutions on behalf of the Council as sole member of Culture and Leisure NL Ltd to amend the Company's Articles of Association, to exercise authority as the appropriate officer under Articles 55 to 62 and to implement any decisions associated with insourcing of Culture, Sport and Leisure and the transfer of assets from Culture and Leisure NL Ltd to the Council

The Plan for North Lanarkshire

Priority	All priorities
Ambition statement	(24) Review and design services around people, communities, and shared resources

1. Background

1.1 This report presents to the Policy & Strategy Committee a re-examination of the case for either retention of the ALEO vehicle, Culture and Leisure NL (CLNL) or the insourcing of direct delivery of Culture, Sport and Leisure services currently provided by CLNL under the terms of a Services Agreement, to North Lanarkshire Council.

1.2 As was the case with the ALEO review process, this re-examination is in line with the requirement placed on the Council by statutory duty of Best Value within the Local Government in Scotland Act 2003 (LGiSA), to secure the best options for providing services to communities.

1.3 ALEO Service Review - Findings

1.3.1 CultureNL Ltd (CLNL) and North Lanarkshire Leisure Ltd (NLL) were subject to full Arms-Length External Organisation (ALEO) service reviews between September 2016 and February 2017, and were found at that time to be performing well against the Council's expectations and service outcomes.

1.3.2 Mindful of the Office of the Scottish Charities Regulator ("OSCR") "*Who's in Charge*" Guidance (2011), a multi-agency and multi-disciplinary Review Group examined various aspects of each ALEOs business and key activities to identify scope for an integrated delivery model to reduce costs and/or achieve service synergies and economies of scale. The group identified that there was scope for financial and non-financial benefits to be gained from moving to an integrated culture, sports and leisure delivery vehicle.

1.3.3 A report considered by the Policy and Strategy Committee in September 2018 stated that the key outcome of the merger of CNL and NLL would be an:-

"Integrated delivery model to reduce costs/and/or achieve synergies and economies of scale".

1.4 Benefits to be Delivered via Integrated Sport, Culture and Leisure Services Delivery Model

1.4.1 The original ALEO review group's key findings included:-

- **Financial** - creating a single management team and maximising the mix of service level agreements and self-delivery could see the integrated delivery model achieve net annual savings of around £0.496m with the most significant savings likely to arise from moving to an integrated delivery model related to reducing duplication in management and support posts within the functions of; Finance, HR, ICT and marketing.
- **Maximisation of use of Council Assets** - a need for the council to maximise use of its assets and partnership working arrangements if it were to deliver the ambition outlined within the We Aspire report for inclusive growth and prosperity for the people and communities of North Lanarkshire.
- **Achieving Transformational Change** - transformational change and strategic but radical solutions are now required for the Council to be able to reduce costs whilst maintaining inclusive services for the communities of North Lanarkshire.

- 1.4.2 The Council's demands of its ALEO (underpinned by austerity and a corresponding focus on statutory services) to drive inclusive growth, requires absolute strategic alignment between ALEO and Council to secure the delivery of the right services in the right ways for and with communities.
- 1.4.3 Audit Scotland in its 2011 report 'Arms-length external organisations (ALEOs): are you getting it right?' reminds Councils that *"ALEOs by their nature are one step removed from Council control and, as a result, governance and financial arrangements can be complex. There is a risk service users and citizens have less influence over how services are provided. There is also the potential for conflicts between the interests of the Council and the ALEO."*
- 1.4.4 Sound, strong and effective governance is required, Audit Scotland underscore this key point;
- "While the use of arm's-length arrangements can offer innovative ways of delivering services, strong governance arrangements need to be in place to ensure that ALEOs contribute effectively to the delivery of the Council's corporate objectives and priorities. It is vital to establish sound governance from the outset. We have seen Councils struggle to exert good and effective governance well after the ALEO was set up and, as a result, services and public funds were exposed to risk. This is particularly important where ALEOs are set up to deliver fast moving innovative projects."*
- 1.4.5 Whilst not set up specifically to deliver elements of The Plan for North Lanarkshire, Culture and Leisure NL Limited require to not only align services absolutely with the One Plan approach, but also achieve the depth and pace of transformational change required.

2. Report

2.1 Achieving Integrated Culture, Sport and Leisure Delivery Vehicle – Emerging Operational and Financial Challenges

Overview

- 2.1.1 The report to the Policy and Resources Committee in September of 2018 titled 'Integration Delivery Model for Sport, Culture and Leisure Services', advised that, a change of this magnitude (the merger) would give rise to a number of operational and financial challenges, a number of which have come to the fore. Specifically, achieving financial certainty and a clear focus from CLNL on the delivery of The Plan for North Lanarkshire. The challenges identified were:-
- **Service Delivery** - Integrated arrangements could be protracted should a clash of corporate cultures come to the forefront.
 - **Financial** - The exact one one-off costs of moving to an integrated delivery solution are largely dependent on the structure and pay/grading model employed, savings and costs likely to arise from integration are dependent upon the policy and operational decisions taken hence higher or lower costs could materialise.

- **Human Resources** - Moving to integrated delivery has scope to generate a range of HR issues which may lead to low staff morale, reduced staffing levels, employee relations issues and loss of expertise or specialisms. Throughout the review, Council officers remained mindful of the Office of the Scottish Charities Regulator (“OSCR”) “*Who’s in Charge*” Guidance (2011), and in particular the requirement for charities’ governance and decision-making to be visibly independent from its funders or shareholders. The Review Group’s findings therefore made **no** recommendations in respect of a potential organisational structure, pay model, governance arrangements, or transition plan required by an integrated delivery vehicle, as it was fully understood the integrated entity itself would need to consider and develop these – to ensure compliance with OSCR.
 - **Governance** - The 2018 risk assessment, highlighted that moving to an integrated delivery model for sports, leisure and culture carried a **Moderate** risk for the Council. It was acknowledged that to ensure that this risk was minimised, the Council would need to provide significant support to the entities during the transition.
- 2.1.2 The loss, immediately prior to the merger, of experienced Board Directors has impacted on the newly merged entity both in terms of stability as well as achieving the required balance of strategic focus across the breadth of Culture and Leisure NL’s portfolio of services. The new organisational culture requiring to be set and driven at governance level has proved difficult to secure. This has had an impact on Culture and Leisure NL’s ability to develop a strategic vision since date of merger.
- 2.1.3 Appendix 3 provides an update on progress against the key aims of the integration from the point of merger to date. It is clear that progress made has not as yet met the expectation of the Council when the merger was agreed.
- 2.2 2018 Estimated Financial Impact of Service Re-Modelling**
- 2.2.1 Focussing on cost reduction opportunities, the original ALEO review group estimated that creating a single management team and maximising the mix of service level agreements and self-delivery could see an integrated delivery model achieve annual operational costs savings of £0.777m offset by a potential reduction in Council SLA income, and realise net annual savings of around £0.496m from moving to an integrated sports, leisure and cultural delivery model.
- 2.2.2 The envisaged scenario set out in 2018, taking savings and one-off costs together, was that recurring savings of £0.496m were deemed to be achievable, at a one-off cost of £1.683m. The “payback” period for the envisaged position was identified as 3.39 years or 3 years and 4 months. The report acknowledged that there was scope for one-off costs to be significantly higher or lower than that envisaged, “payback” periods could range from as little as 2.07 years to as much as 4.72 years.
- 2.2.3 The delay in achieving the merger, coupled with ongoing early governance challenges pre and post-merger, has at worst compromised, at best delayed, achievement of the saving to beyond 2019/20.

2.3 Human Resources

2.3.1 Significantly, the 2018 analysis determined that CNL and NL had different Job Evaluation Schemes, Pay and Grading Structures, Pension Contributions, employment policies and terms and conditions of employment. CultureNL Ltd operated a pay model akin to that used within the Council, with NL Leisure Ltd continuing to operate the revised pay and grading structure and Terms and Conditions approved by their Board of Directors during 2014. The Review's HR sub-group explored these varying matters but determined that a further, more detailed review would be required as part of an integration process, which would then be a matter for the merged entities (Culture and Leisure NL's Board) to determine the future approach.

2.3.2 To date this has not been progressed other than in respect of the Senior Officer post.

2.4 Future State – Singularity of Strategic Focus

2.4.1 In terms of operational delivery, The Plan for North Lanarkshire demands a service delivery model which operates with a significant degree of singularity of strategic focus. This will test the Council and Culture and Leisure NL in terms of; resilience of delivery teams, creativity, flexibility, community empowerment approach and pace and direction of service change. The strategic and operational ask of The Plan for North Lanarkshire is illustrated in Table 1.

2.4.2 Table 1 – The Plan for North Lanarkshire – Service Delivery Model Requirements

Strategic	Operational
<ul style="list-style-type: none"> • Strong links to democratic accountability linking strategic planning directly to operational delivery; • adherence to the vision; • sharper alignment with The One Plan in terms of strategic/business planning; • develop and achieve a multi-skilled workforce for the future; • release of significant financial savings via improved service models as set out in The Plan for North Lanarkshire; • streamline bureaucracy and work in partnership with communities to deliver the right services in the right ways; • flexible, local democratically accountable plans. 	<ul style="list-style-type: none"> • recalibrated service delivery models; • delivery of realignment/reductions/cessation of services; • integrated and joined up local operational delivery teams; • effective workforce development and training opportunities to secure a multi-skilled workforce prepared and driving innovative service delivery models; • resilient employees and operational plans; and • optimise the operational synergies of locally delivered services across the Council and Community Planning Partnership (i.e. grounds maintenance, pitch maintenance, facility management, catering, cleaning, caretaking, sport and cultural development programmes, facility management, etc).

2.4.3 In both facing austerity and recalibrating services delivery in line with The Plan for North Lanarkshire, the Council required CLNL to be mindful of the undernoted partnership factors/challenges when mobilising and galvanising its planning:-

- need to increase flexibility and alignment to the strategic objectives of The Plan for North Lanarkshire;
- major cost liabilities remain with the Council – i.e. major structural life-cycle investment on stadia, leisure centres and venues;

- limited ability on the Council's part to determine and support the re-profiling and recalibrating the delivery of services;
- cost and consequential erosion of the client/contract management role;
- upskilling and re-skilling of employees to ensure the development of multi-skilled workforce no longer in professional segmented silos;
- concerns around the ring fencing of funding for the delivery of specific areas of non-statutory services, in order to address the financial viability of a wholly owned Council company;
- the ability to re-organise services to meet the needs of the Council and its communities at pace through a Board that may have potentially conflicting concerns linked to ensuring the viability of the Company;
- harmonisation of employee terms and conditions;
- identifying an optimising broader service integration opportunities beyond the operational confines of culture, sports and leisure – i.e. grounds maintenance, building maintenance, records management, curriculum enhancement, curriculum delivery (drama, dance, etc) social impact programmes i.e. Club365; Digital NL; training and organisational development; and
- service resilience – i.e. capacity/resilience to drive; major service delivery transformation, support for major infrastructure and associated community empowerment/engagement programmes.

2.5 Updated Options Appraisal – 2019/20

2.5.1 Reflecting not only the emerging challenges set out in this report, but also the shift in the Council's strategic and financial position since the original Options Appraisal was carried out in 2018, an updated Options Appraisal has been carried out to reflect the importance of the operational delivery of culture, sport and leisure services aligning with the Council's strategic objectives and financial planning priorities. This approach, in accordance with the original ALEO review process reflects Audit Scotland Guidance, in terms of the information set out in 'How Council's Use Arms Length External Organisations, ie *"What is important is that Councils can demonstrate that any policy position enables them to secure Best Value. This means making an objective assessment of cost, quality and other service benefits. Otherwise there is a risk the Council will miss the best options to sustain or improve a service."* The following two options have been re-considered:-

- Option 1 Retention of integrated provision of culture, sports and leisure through Culture and Leisure North Lanarkshire Limited' and
- Option 2 Insourcing of culture, sport and leisure delivery.

2.5.2 The risks, benefits and uncertainties likely to arise from implementing each of these options were assessed against the following strategic goals:

- alignment with The Plan for North Lanarkshire – programme of work & budget;
- minimise future risks to the Council;
- obtain cost effective and affordable service delivery;
- maintain influence regarding service delivery and performance; and
- obtain a trusted relationship with a proven service delivery organisation.

2.5.3 This updated Option Appraisal followed the rationale utilised within the ALEO Phase 1 Review Programme with identical definitions and weightings applied and was conducted by Council Officers. Appendix 2 includes a comparison of the options appraisal, with Option 2 the top scoring option. Appendix 2 includes a comparison of the outcome of the assessments conducted in 2017 and the recent assessment. Key factors for the ultimate change in scoring include:-

- a high score (5) for alignment with The Plan for North Lanarkshire – programme - budget, reflecting the requirement for an integrated and coordinated service delivery model. It is considered that insourcing would deliver these benefits without the complexity and risk associated with the current ALEO model and would provide significant additional benefits including; further operational efficiencies and achieve the pace and depth of transformational change required in line with The Plan for North Lanarkshire.
- a high score (5) for maintaining influence regarding service delivery and performance, reflecting the conflicts inherent in the current ALEO service delivery model (the requirement to act in the best interests of the company as opposed to ensuring full alignment with the Council's vision) and the benefits possible from increased control supporting accelerating the pace and depth of change.

2.6 Updated Risk Assessment

2.6.1 An updated risk assessment has been completed. The risk rating is **Moderate** for the Council in terms of both Options. The updated assessment recognises the resilience of the council to manage major change linked to austerity and the delivery of major strategic infrastructure and service change programmes as well as the following factors:-

- the Council's track record in delivering and Managing Change programmes;
- the ability to control service delivery and strategic alignment with The Plan for North Lanarkshire;
- annual and recurring loss of charitable status relief of £4.6m;
- potential VAT recovery of £0.904m; and
- the opportunity to integrate support services functions through in house delivery model enhanced by digital technology improvements.

2.6.2 The insourcing option could offer positive impacts in terms of minimising the challenges for the Council identified in recalibrating the operational delivery of culture, sport and leisure services via Culture and Leisure NL in line with The Plan for North Lanarkshire. However, initially financial and human resources would be require to be deployed to manage; the legal process, the change programme and the financial impacts.

2.7 Legal and Human Resource Implications

2.7.1 In the event that Culture and Leisure NL is insourced, there are significant legal considerations to which Council will need to have regard.

2.7.2 Dissolution and winding up process/resolutions

2.7.2.1 One of the principal issues for the Council in considering dissolution/winding up is the requirement for the prior consent of OSCR and the process to be undertaken in relation to that. There are two ways of doing that – first and most common a formal winding up process involving the appointment of an external liquidator to each of the companies (which may be something OSCR or the Regulator insist on) or second to do so informally – by first ensuring all assets and liabilities are transferred and then after a three month period of effective dormancy, applying for informal striking off of the relevant companies (with director confirmation that both those things have happened). It is assumed for the balance of this paragraph that the more formal process is to be followed.

2.7.2.2 There are two initial steps to the process:-

1. Application to OSCR is made by the Board of Culture and Leisure NL which would also issue notice to shareholders convening the extraordinary general meeting or seeking a written resolution.
2. The application and the winding up resolutions require to be accompanied by a directors' declaration of solvency, stating that the company will be able to pay its debts in full within 12 months from commencement of the winding up.

2.7.2.3 The co-operation of the Board of Culture and Leisure NL will be required in implementing any winding up or dissolution.

2.7.2.4 The procedure to wind up one of the CICs would be very similar, with the additional points being:-

- Culture and Leisure NL is the shareholder – which means that its Board would require to vote to pass the resolution;
- The Articles of Association of each CIC contain a provision (Article 3.4) requiring that on a winding up, after payment of all liabilities any residual assets must be given or transferred to Culture and Leisure NL (as the asset-locked body specified in Article 3.5);
- Assets of the CICs – or the share of the CICs – would require to flow through Culture and Leisure NL or assigned direct to the Council with the consent of OSCR, the Regulator and any insolvency practitioner; and
- Once OSCR's consent has been given (whether deemed or express), the formal steps to commence the Members Voluntary winding up process can be taken.

2.7.2.5 As a registered charity, Culture and Leisure NL's Articles of Association contain a prohibition against:

- (i) paying or transferring the assets of Culture and Leisure NL to the members of Culture and Leisure NL "by way of dividend, bonus or otherwise by way of profit"; and
- (ii) on a winding up or dissolution, paying or distributing any surplus assets left after payment of its debts and liabilities to any member of the company (Article 12).

2.7.2.6 There would be an amendment to the Articles of Association, by way of Special Resolution, to permit the transfer of the company's net assets to the Council to be ring-fenced and to be used by the Council in furtherance of Culture and Leisure NL's charitable objectives.

2.8 **Tax**

2.8.1 On winding up Culture and Leisure NL and its subsidiaries may crystallise tax liabilities and detailed tax planning will be carried out to mitigate any liabilities. The timing of the transactions may directly affect the tax liabilities which arise, due to the loss of charitable tax reliefs.

2.8.2 Under Value Added Tax (VAT) legislation, the Council will be required to review the potential for a Transfer of Going Concern (TOGC) which would ensure that any transfer was outwith the scope of VAT if certain conditions are met.

2.9 **Charity law and OSCR Considerations**

2.9.1 As Culture and Leisure NL is a registered Scottish charity, any winding up or dissolution will require the prior approval of the charities regulator in Scotland, OSCR.

2.9.2 OSCR approval must be sought 42 days prior to any winding up being finalised. OSCR has 28 days to consider any application.

2.9.3 As part of any winding up process OSCR must be satisfied that the trustees of the charity – who are also the directors in the case of Culture and Leisure NL – are adequately dealing with the assets and liabilities of the charity in accordance with the charity's constitution as well as prevailing law and regulation. Any application for Consent to Wind Up involves providing OSCR with details including (1) the rationale for the winding up if assets are not being passed to another registered charity; (2) a statement of assets and liabilities and how those are being handled in a winding up; and (3) the distribution of the charity's assets.

2.9.4 Any winding up involves properly handling all assets and liabilities. For example, Culture and Leisure NL has substantial assets that are held independently of the Council. As a consequence of such assets being held in a registered charity, such assets are held in perpetuity for charitable purposes and these assets will be applied for charitable purposes in accordance with the Culture and Leisure NL constitution. The Council should ensure that such assets are used to "allow the people of North Lanarkshire to flourish through the provision of cultural, sporting and leisure facilities".

2.10 Employment and Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ("TUPE") Considerations

2.10.1 Taking the Culture, Sport and Leisure services back in house will amount to a relevant transfer under TUPE. Employees of Culture and Leisure NL will be protected in respect of the transfer. Culture and Leisure NL and the Council will require to comply with their obligations under TUPE, including sharing information in advance of the transfer. The Council and Culture and Leisure NL are required to inform and, if necessary, consult with the recognised Trade Unions in respect of employees affected by the transfer. The Council will ensure that sufficient time is built-in to the process to allow the provision of information and consultation, with a view to reaching agreement, to take place. Employees transferring from Culture and Leisure NL will maintain their continuity of employment and will continue to be employed on their existing terms and conditions of employment. Transferring employees will also benefit from the Council's inclusion on the Redundancy Payments Modifications Order. Transferring employees are, however, entitled to object to the transfer.

2.11 Other relevant considerations

2.11.1 Culture and Leisure NL qualifies for charities relief from non-domestic rates, this advantage would be lost if it is wound up and the activities are brought in-house. The ongoing cost of this will be quantified and taken into account in future planning.

2.11.2 There will be a number of live contracts and/or lease agreements in place with suppliers. Consideration would have to be given to what happens with such contracts if the decision is made to wind-up Culture and Leisure NL. For example, where a contract contains an assignation or novation clause, the contract could be assigned/novated over to the Council.

2.11.3 As detailed above there is a considerable complexity in dissolving/winding up Culture and Leisure NL, including financial implications around tax liabilities. The Council will also require to keep third party regulators OSCR and the Regulator of Community Interest Companies informed and on-board throughout as well as managing the Board of Culture and Leisure NL. The process for doing is likely to be protracted, but nonetheless manageable.

2.12 Financial Impact

2.12.1 On the basis of the same portfolio of service operation, the headline cost to the Council from this proposal would be £3.5m per annum as a result of changing in property rates and VAT as set out below. In addition, Committee will need to be mindful of the potential additional costs associated with harmonisation as part of an in-house delivery model.

2.12.2 However, it is not anticipated that services would be delivered from the same property base as at present. Asset rationalisation and service delivery changes linked to The Plan for North Lanarkshire will reduce the financial impact over an estimated 5 year period.

2.13 VAT

2.13.1 Unlike the Council, Culture and Leisure North Lanarkshire is unable to fully recover VAT. The so-called irrecoverable VAT position (the VAT that cannot be recovered on purchases in support of their charitable activities) for Culture and Leisure NL accounts for approximately £0.904m of costs annually. Insourcing has the potential to remove this burden completely.

2.13.2 However, the Council will be required to properly assess the impact the transfer of service delivery in-house would have on its own partial exemption calculation. If the partial exemption limit of 5% is exceeded the Council would be required to repay all VAT it has recovered from exempt supplies in the given financial year. The current partial exemption percentage applicable for the Council is approximately 1.5% so this is unlikely to be an issue but will require to be monitored as Council activity and service delivery patterns change over time.

2.14 Property Rates

2.14.1 The most significant financial impact of insourcing of culture, sports and leisure services would be the loss of charitable rates relief on the properties currently operated by Culture and Leisure North Lanarkshire. The current estimate is that this would create a cost burden within the Council of approximately £4.4m per annum. To provide some context, this can be broken down as set out in Table 2:

2.14.2 **Table 2 – Property Rates**

Property Description	Estimated Property Rates (£000)
Libraries	347
Community Centres / Halls	1,060
Museums	207
Sport / Leisure Centres	2,408
Other	388
Total	4,410

2.14.3 However, it should be noted that the continued development of the Town Hub/ Community Hub delivery model will present an opportunity to mitigate the impact of the cost burden.

2.15 Employees

2.15.1 1,010 contracted employees (contracted FTE 697.53) and 554 casual employees will be in scope to transfer to the Council. Given that the former CNL maintained the pay and grading model and employment terms and conditions inherited from the Council in 2013, the financial impact of insourcing these employees is anticipated to be minimal.

2.15.2 However, as NLL implemented a revised pay and grading model there is the potential that following TUPE transfer of staff to the Council there may be transition issues should changes be made to staff terms and conditions taking into account the Council's pay and grading models. In addition, the differential pay and grading model has the potential to create equal pay and industrial relations issues. These were, however, also significant risks associated with the integration/merger of CultureNL and North Lanarkshire Leisure as approved by Policy & Resources Committee in September 2018.

2.15.3 In that regard, the Council would not be inheriting a greater risk. Conversely, it could be argued that the Council would be in a better position to mitigate against these risks with the greater resilience of resources to manage the transition / change and implement the required changes.

2.16 Potential Opportunities

Support Services

- 2.16.1 Whilst the approved merger of CultureNL and North Lanarkshire Leisure will provide savings associated with combined support service functions, there is the scope for these savings to be significantly enhanced from the insourcing model. In many circumstances it may be possible for much of the existing support service functions to be largely absorbed within existing Council infrastructure, particularly with the implementation of revised operating models.
- 2.16.2 The impact on each support service including Finance, HR, communications, IT and facilities management would need to be more fully assessed to understand and assess the potential benefits (including the reduction in existing income recovery from SLAs).
- 2.16.3 In addition, the removal of both client monitoring requirements within the Council and Board servicing arrangements within Culture and Leisure NL has the potential to allow senior managers to be more focussed/aligned on service delivery requirements. Finally, the Council's responsibilities for Following the Public Pound would be more transparent and more effectively discharged.

2.17 Future Savings / Operating Models

- 2.17.1 With increased control over operational service delivery, there is the scope for additional savings to be achieved through closer alignment of service delivery with the objectives of The Plan for North Lanarkshire.

2.18 One-Off Costs

- 2.18.1 The previous options appraisal considered by Policy & Resources Committee in September 2018, outlined a number of scenarios in relation to potential one-off costs. Cost estimates ranged from £1.026m to £2.339m. It is not currently anticipated that the one-off costs associated with the in-house model would vary significantly from previous estimates.
- 2.18.2 In addition, the in-house model would see all assets and liabilities transferring to the Council, including surplus cash balances at the date of transfer.

2.19 Transfer of Assets and Liabilities

- 2.19.1 The in-house model would see all assets and liabilities transferring to the Council, including surplus cash balances at the date of transfer.
- 2.19.2 At the most recently audited financial period at year ended 31 March 2019, the summary financial position of the then CNL Ltd and NLL Ltd was as set out in Table 3.

2.19.3 Table 3 – Summary of Financial Position

	CNL Ltd £000	NLL Ltd £000
Fixed Assets	0	2,387
Current Assets	9,816	3,689
Current Liabilities	(5,145)	(3,364)
Net Current Assets	4,671	325
Long-Term Liabilities	0	(592)
Total Net Assets	4,671	2,120
Funds:		
Restricted Funds	43	55
General Reserves	971	1,663
Designated Reserves	3,657	402
Total Funds	4,671	2,120

2.19.4 Note:-

- Restricted Funds are funds which are to be used in accordance with specific restrictions imposed by donors or which have been raised by the company for particular purposes.
- General Reserves are available for use at the discretion of the trustees in furtherance of the general objectives of the company which have not been designated for any other purpose.
- Designated Funds are part of the General Reserves and represent monies earmarked for a particular project or use, without committing or restricting the funds legally. Designated reserves held by CNL included to support the one-off costs linked to savings, voluntary severance, PC replacement and replacement booking system. NLL's included depreciation on investment assets.

3. Equality and Diversity

3.1 Fairer Scotland Duty

3.1.1 Initial assessment carried out.

3.2 Equality Impact Assessment

3.1.2 Initial assessment carried out.

4. Implications

4.1 Financial Impact

4.1.1 As set out in section 2.6.

4.2 HR/Policy/Legislative Impact

4.2.1 As set out in section 2.5.

4.3 Environmental Impact

4.3.1 None

4.4 Risk Impact

4.4.1 The risk impacts are outlined in the Risk Assessment in Appendix 1.

5. Measures of success

5.1 Delivery of an approach with optimum flexibility and services fully aligned and integrated within The Plan for North Lanarkshire and within the available budget envelope.

6. Supporting documents

6.1 Option Appraisal to Identify Future Leisure & Cultural Service Delivery (24 January 2017)
<https://mars.northlanarkshire.gov.uk/egenda/images/att86113.pdf>

6.2 Integrated Delivery Model for Sport, Culture and Leisure Services (27 September 2018)
<https://mars.northlanarkshire.gov.uk/egenda/images/att88805.pdf>

6.3 Appendix 1 – Risk Assessments

6.3 Appendix 2 – Options Appraisals

6.4 Appendix 3 – Culture and Leisure NL Limited Integration Plan Aims – Progress Update

6.5 Link to Equality Impact Assessment
<https://www.northlanarkshire.gov.uk/index.aspx?articleid=33067>



Des Murray
Chief Executive

Risk Assessment – Integrated Model of delivery of culture, sports and leisure services

Key Considerations	Risk Score	Risk Level	What does this mean?	<u>Rationale and commentary re risk score awarded for moving to integrated delivery</u>
Service Delivery	3	Moderate	Some disruption but not significant	The score of 3 indicates some disruption, albeit not significant, would be expected from moving to an integrated delivery model as this would require redeployment of staff resources, reducing their capacity to continue to deliver "business as usual" operations. Given this is likely to relate to headquarters and/or support service expertise, minimal impact is expected on frontline operations. Other factors considered in scoring this risk include: existing companies being experienced in creating and managing transition plans and mitigating actions; and ability of the integrated vehicle to retain each entity's existing ICT provision and individual branding.
Finance	1	Insignificant	Loss/cost < 1% of NLC Net Revenue Budget of £734m	<p>In comparing the potential costs associated with initial integration to NLC's annual revenue budget, the level of financial risk is insignificant as it represents less than 1% or £7.3m. Financial risks identified during the appraisal included:</p> <p>* rates relief (£1.9m for CNL or £2.7m for NLL) could be lost if the Scottish Government do not allow existing charity relief to transfer to the merged entity. CONTINUATION OF RELIEF HAS SINCE BEEN CONFIRMED, FURTHER REDUCING THE FINANCIAL RISK</p> <p>* the associated employer relationship combined with NLL operating different and more favourable pay and grading model/Terms & Conditions could increase the likelihood of claims for equal pay arising. Whilst groups of employees would need to present evidence to show (generally) men doing similar work were being paid more than women doing the same work, some modelling was undertaken to enable the Group to assess the level of risk. Various illustrative scenarios were examined, resulting in figures ranging from £0.1m to £3m being identified. Whilst TUPE will apply initially, an integrated entity may in due course harmonise employee terms and conditions where such can be evidenced by economic, technical or organisational rationale. This may increase the delivery vehicle's annual running costs.</p> <p>* Employer pension contributions for an integrated vehicle are likely to be reassessed by the SPFO, and could see the revised entity paying around <u>£0.1m more or less than that currently applicable</u> to the individual organisations. CNL presently pay 20.7% whilst NLL pay 19.3% hence the variation could be positive or adverse, depending on the level of contribution applicable to an integrated vehicle.</p> <p>The Finance sub-group findings indicated integration is financially beneficial to the Council, and has an acceptable pay-back period. One-off costs, presently ranging from £1m to £2.3m are estimated, but would vary up or down depending on the structure approved by the revised entity, IT systems chosen, decisions on self-delivery of support vs SLA etc.</p>
HR	3	Moderate	Reduced staffing levels, lower likelihood of compulsory redundancies, industrial relations	Risk score envisages an integrated vehicle will see a reduction in staffing levels, either through the new structure created or some employees voluntarily leaving due to uncertainty/morale issues during the transition process. Although TUPE will apply, with employees and unions consulted, the varied T&Cs operational in both organisations has scope to lead to a 2-tier workforce, which brings with it a risk of poor staff morale and industrial relations.
Legal	3	Moderate	Legal considerations particularly Corporate, Assets and Contract related.	Integrated delivery will give rise to a variety of legal considerations, particularly around employees, assets and contracts. These are considered to be significant in volume rather than complex, with in effect, one organisation being dissolved and absorbed into the other.
Reputation	3	Moderate	Continued &/or adverse press coverage	Any major change with NLC tends to create press coverage, and variations to 2 NLC-owned organisations is expected to generate interest over at least a short period of time. Similar to the comment recorded against the service delivery risk, redeploying staff resources to deliver the integration plan could see some "business as usual" focus lost. There is also scope for the press to focus on the apparent disappearance of a successful service delivery organisation.
Average Risk Score	3		Moderate risk	
Capable of delivering strategic goal regarding risk?	YES			Some impact on achieving goal of minimising future risk, but requires significant Council support to do so.

Risk Assessment - Insourcing delivery of culture, sports and leisure services

Key Considerations	Risk Score	Risk Level	What does this mean?	Rationale and commentary
Service Delivery	3	Moderate	Some disruption but not significant	<p>The score of 3 indicates some disruption, albeit not significant, would be expected from moving to in house delivery as this would require redeployment of staff resources, reducing their capacity to continue to deliver 'business as usual' operations. Given this is likely to relate to corporate/support service expertise/resourcing, minimal impact is expected on frontline operations. Other factors considered in scoring this risk include: the Council's record in delivering and managing change programmes through transition plans and mitigating actions; the ability to utilise existing NLC infrastructure (including support services) and branding.</p> <p>From the Council's perspective the improvement in the ability to control service delivery and strategic alignment with The Plan for North Lanarkshire is an important consideration.</p>
Finance	1	Insignificant	Loss/cost < 1% of NLC Net Revenue Budget of £781m	<p>In comparing the potential costs associated with the insourcing to NLC's annual revenue budget, the level of financial risk is deemed insignificant as it represents less than 1% of £7.81m. However, the scale of financial cost burden would remain a key consideration for the Council's financial planning processes for 2020/21 and beyond. The financial risk assessment included the following factors:</p> <ul style="list-style-type: none"> • charitable rates relief of approximately £4.4m for CLNL would be lost, • in house service delivery means the Council could recover VAT from HMRC (currently estimated to be approximately £0.904m). However, there is a potential risk to the Council's partial exemption limit allowable under the VAT Act 1994. The Council would be required to reassess this partial exemption calculation to reflect changes to direct Council delivered services. If the partial exemption limit of 5% is exceeded the Council would be required to repay all VAT it has recovered from exempt supplies in the given financial year. • As with the risk assessment completed to support the decision to integrate service delivery in a merged body, the insourcing of culture, sports and leisure services has the same risk associated with NLL's differing pay and grading model and Terms & Conditions of Employment. This presents both the potential for Equal Pay issues across a wider workforce (i.e. across the Council rather than across a merged body) and the impact of potentially harmonising pay and grading / terms and conditions. Scenarios previously assessed for a merged body indicated risks ranging from £0.1m to £3m. This was potentially a risk the Council would have to bear regardless of the model of merged body chosen and the risk remains for the insourcing of service delivery.

				<ul style="list-style-type: none"> • Employer pension contributions in the current bodies are 20.7% for CNL and 19.3% for NLL. The Council's current rate is 19.3%. All rates are subject to triennial valuations as assessed by pension scheme actuaries appointed by Strathclyde Pension Fund. It would be expected that the inclusion of affected staff within the Council's scheme membership would not have a material impact but this would require to be fully assessed. • There is a potential opportunity from the further integration of support service functions through the in-house service delivery model where activity currently supported through specific support services in the CLNL structures has the potential to be partially absorbed into the Council's existing infrastructure. These opportunities are likely to be enhanced by the digital technological improvements introduced through the Council's investment in DigitalNL. <p>However, the loss of income for services currently recharged by the Council to CLNL would partially offset the benefits described above.</p> <ul style="list-style-type: none"> • The one-off costs assumed for the merger of CNL/NLL were estimated to be between £1m and £2.3m but this would vary depending on, for instance, the scale of external legal advice and consultancy that would be required.
HR	3	Moderate	Reduced staffing levels, lower likelihood of compulsory redundancies, industrial relations	<p>Risk score envisages an in-house model will see a reduction in staffing levels, either through the new structures/service re-design or the unavoidable uncertainty causing some employees to leave during the transition process. Although TUPE will apply, with employees and Trade Unions consulted, the varied pay and grading / terms and conditions applicable (particularly in the former NLL) has scope to lead to a two-tier workforce within the Council, which brings with it the potential for impacts on staff morale and the potential for adverse industrial relations. However, it should also be noted that the transfer out of the Council was a cause of great uncertainty for employees in 2006 for NLL and 2013 for CNL and there is the potential for the opposite to be the case with some staff potentially having positive views on a return to the Council.</p> <p>The Council's track record in managing change processes and the resilience provided by a larger HR support function will lessen the risk associated with the anticipated changes.</p>
Legal	3	Moderate	Legal considerations particularly Corporate, Assets and Contract related	<p>In-house service delivery will give rise to a variety of legal considerations, particularly around employees, assets and contracts. These are considered to be significant in volume rather than complex. There may be issues with OSCR in relation to the loss of charitable status for service delivery but the experience of the dissolution of TCA Ltd suggests that OSCR would be content if various conditions are met including the use of balances and assets for the furtherance of charitable objectives.</p>

Reputation	3	Moderate	Continued and/or adverse press coverage	Any major change within NLC tends to create press coverage and variations to the service delivery model is likely to generate interest over at least a short period of time. There is a risk that redeploying staff resources to deliver the in house model could see some 'business as usual' focus lost but there is the potential for the Council's greater resilience and economies of scale to support the change process. The clarity of focus from an in house model will ensure the Council is given ownership and can manage the message around future investment / disinvestment decisions around the delivery of culture, sports and leisure service delivery.
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Average Risk Score	3		Moderate risk
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Capable of delivering strategic goal regarding risk?			YES	Some impact on achieving goal of minimising risk, but requires significant resource requirements to manage the change programme and manage the financial impacts.
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**ALEOS & EXTERNAL BODIES PHASE 1 REVIEW
SERVICE DELIVERY OPTIONS FOR CONSIDERATION**

Ref. No	Description of Option	Additional Information
1	Retain existing service delivery arrangements as is – no changes	No changes at all
2	Bring service delivery back in house	Both charities are wound up, with service delivery returned to Council and considered as part of wider service prioritisation moving forward
3	Retain 2 subsidiary delivery vehicles, realigning specific service elements to ensure best fit for service users	Both charities are retained, but package of services provided by each organisation to be amended to remove any overlap with each other, other ALEOs and other Council services Final package of services contained within each Charity will represent best fit for Council and its service users. Examples of services to be realigned may include: <ul style="list-style-type: none"> • Catering • Community letting & Pitches • Property Management • Event Management • CCTV
4	Specify 2 service delivery packages, tendering for delivery suppliers to ensure best value is obtained	Similar to option 3 above; 2 optimum packages of services will be identified, but then subjected to open competition/tender rather than automatically delivered by a Council-owned company. This option assumes TUPE would apply as appropriate.
5	Expand option 3 above to create shared service functions: <i>5(a) – shared services managed by an existing ALEO;</i> <i>5(b) – new Professional services type ALEO created and available to all Council ALEOs and Services.</i>	Again assumes optimum packages are identified, but that services capable of being shared between both charities are extracted and managed by the most appropriate resource. Examples of activity which could be considered for a shared service solution include: <ul style="list-style-type: none"> • HR • IT • Finance • Communication and Marketing • Events management • Facilities support – catering, cleaning, janitors etc. • Venue and facility bookings
6	Create a new company structure with scope to retain specialisms, whilst maximising commercial opportunities and ensuring best fit for service users	Council will review all available legal vehicles against its required objectives, and upon identifying vehicle which best satisfies requirements, both charities will be wound up and reconstituted into a new vehicle. The new vehicle will be required to enable the different cultures and focus currently operating within each of the existing charities to continue, whilst allowing commercial and support service activities to be structured to maximise benefits and efficiencies for the Council.
7	Merge existing NL Leisure and Culture NL activities within a single charity, ensuring the package of services to be delivered represents the best fit for the Council's future service delivery.	Similar to option 6 above, but likely to require adoption of a slightly different legal process, and the approval of the existing Boards of Directors, as in essence the activities of one body will transfer to another. As with option 6 above, it is envisaged the remaining charity would operate a committee-type structure and trading subsidiary to ensure maximum benefits can be obtained.

**ALEOS & EXTERNAL BODIES PHASE 1 REVIEW
SUMMARY OF OPTION APPRAISAL**

COUNCIL'S STRATEGIC GOALS	OPTION REFERENCE NUMBERS:							
	1	2	3	4	5(a)	5(b)	6	7
Alignment with the Council's Business Plan and key priorities to 2020	√√√	√√√√	√√√√	√√√	√√√√	√	√√√√√	√√√√
Minimise future risks to the Council	√√√	√√	√√√	√√	√√√√	√	√√√	√√√
Obtain cost effective and affordable service delivery	√√	√	√√√	√√√	√√√	√	√√√√	√√√√
Maintain influence regarding service delivery and performance	√√√√	√√√√√	√√√√	√√√	√√√√	√√√	√√√√	√√√√
Obtain a trusted relationship with a proven service delivery organisation	√√√√	√√√	√√√	√√	√√√	√√	√√√	√√√√
Weighted Totals	297	280	330	241	353	135	382	377
Ranking of Options	5th	6th	4th	7th	3rd	8th	1st	2nd

Option Appraisal Assessment Definitions:

√	Minimal	No or minimal impact on above goals
√√	Some	Some impact on achieving goal but failings in other areas
√√√	Reasonable	Generally likely to achieve goal but limited opportunity for additional benefits
√√√√	Good	Will achieve goal and may offer some additional benefits
√√√√√	Very Good	Will definitely achieve goals with further opportunities for additional benefits

Summary of Option Appraisal

Council's Strategic Goals	Options	
	Integrated provision of culture, sports and leisure through Culture and Leisure North Lanarkshire	Insourcing of culture, sports and leisure service delivery
Alignment with The Plan for North Lanarkshire	√√√√	√√√√√
Minimise future risks to the Council	√√√	√√√
Obtain cost effective and affordable service delivery	√√√	√√
Maintain influence regarding service delivery and performance	√√√	√√√√√
Obtain a trusted relationship with a proven service delivery organisation	√√	√√√
Weighted Totals	315	355
Ranking	2nd	1st

Options Appraisal Assessment Definitions:

Minimal

Some

Reasonable

Good

Very Good

No or minimal impact on above goals

Some impact on achieving goal but failings in other areas

Generally likely to achieve goal but limited opportunity for additional benefits

Will achieve goal and may offer some additional benefits

Will definitely achieve goals with further opportunities for additional benefits

Summary of Option Appraisal - comparison of assessments

Option 1 - Integrated provision of culture, sports and leisure through Culture and Leisure North Lanarkshire			
	2017 Assessment	2020 Assessment	Movement
Council's Strategic Goals			
Alignment with The Plan for North Lanarkshire	4	4	-
Minimise future risks to the Council	3	3	-
Obtain cost effective and affordable service delivery	4	3	-1
Maintain influence regarding service delivery and performance	4	3	-1
Obtain a trusted relationship with a proven service delivery organisation	4	2	-2

Option 2 - Insourcing of culture, sports and leisure service delivery			
	2017 Assessment	2020 Assessment	Movement
Council's Strategic Goals			
Alignment with The Plan for North Lanarkshire	4	5	+1
Minimise future risks to the Council	2	3	+1
Obtain cost effective and affordable service delivery	1	2	+1
Maintain influence regarding service delivery and performance	5	5	-
Obtain a trusted relationship with a proven service delivery organisation	3	3	-

Appendix 3

Culture and Leisure NL Limited Integration Plan Aims – Progress Update

Action (2018)	Status (2020)	Comments
Create a single delivery vehicle and management team in respect of sport leisure and cultural services	Partially completed	Merger only – single management team not progressed as yet due to Governance challenges
Create one Board of Directors, with an option for one commercial trading company, with opportunities available to all existing Directors to be involved in each	Complete	Balance of existing CNL and NLL not achieved. Creation of new operating culture for merge ALEO not achieved
Protect front line service delivered	Achieved	Achieved as a consequence of the non delivery of merger savings. Focus remained on two separate service delivery models ie Leisure and Culture
Deliver the minimum financial saving of £0.5m identified	Not Achieved	No integrated strategic planning in place to deliver
Consider any funding consequences associated with the Council's challenging financial settlement	Non-integrated savings options initially presented to Budget groups for 2020-2023	Lack of integrated planning in terms of budget savings proposals. No clear links to The Plan for North Lanarkshire or its associated programme of work
Minimise disruption to existing service delivery during the transition phase	Business as usual in respect of former service delivery approach, ie Leisure and Culture, two separate models	Terms of Transfer agreement achieved this at the cost of non-delivery of savings well beyond the transition phase.