

North Lanarkshire Council Report

Policy and Strategy Committee

approval noting

Ref LMcM/EW

Date 19/03/20

In-sourcing the Delivery of Culture, Sport and Leisure Services – Programme Delivery Plan and Governance

From Lizanne McMurrich, Head of Communities

Email mcmurrichl@northlan.gov.uk **Telephone** 01236 812338

Executive Summary

Following the decision taken by the Policy and Strategy Committee at its meeting on 31st January 2020 to insource the delivery of culture, sport and leisure services, currently provided by Culture and Leisure NL Limited, this report provides an update on the following:-

1. the preparation and implementation of a detailed in-sourcing plan including full timeline;
2. a full timeline of the intended plan for the insourcing of the Services and key milestones;
3. the actions being undertaken to rapidly address the harmonisation of terms and conditions of employment;
4. further assessment of any potential Equal Pay implications as a result of the process;
5. the future governance arrangements including the reporting framework to ensure full scrutiny over the direction and provision of culture, sport and leisure services; and
6. the plans for Trades Union engagement and consultation.

Recommendations

Committee is asked to:-

- (1) note the indicative process and actions as outlined in Appendices 1 and 2;
- (2) note progress to date as referred to in section 1.2 and Appendix 1;
- (3) homologate the action taken by the Chief Executive in exercising the powers of the Council under the terms of Articles 48 and 50 of the Articles of Association of North Lanarkshire Leisure Limited ('NLL) to remove four independent directors of NLL;
- (4) homologate the action taken by the Chief Executive in approving the special resolution to conclude the governance arrangements required to dissolve the company, including submission of the final accounts and appropriate declarations as set out in paragraph 2.7.1 of this report;

- (5) agree that the Head of Democratic and Legal 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 NLL to amend the Company's Articles of Association, to exercise authority as the appropriate officer, and to implement any decisions and take all necessary action to ensure the winding up of NLL, including its dissolution and removal from the Scottish Charity Register;
- (6) note the extension of the 'emergency period' for the continued appointment of Culture and Leisure NL Partner and Independent Directors; and
- (7) note that future update reports on the in-sourcing of culture, sport and leisure services, and the scrutiny of these services, come within the remit of the Community Empowerment Committee, and that the Scheme of Administration be amended to reflect this position.

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 In-sourcing the Delivery of Culture, Sport and Leisure Services Currently Provided by Culture and Leisure North Lanarkshire Limited

The Policy and Strategy Committee, at its meeting on 31 January 2020 approved the following actions:-

- 1) To insource the delivery of Culture, Sport and Leisure Services which are currently provided by Culture and Leisure NL Limited;
- (2) To prepare and implement a detailed in-sourcing plan;
- (3) To progress the preparation and execute all resolutions on behalf of the Council as sole member of Culture and Leisure NL Limited 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 in-sourcing Culture, Sport and Leisure Services and the transfer of assets from Culture and Leisure NL Limited to the Council, and
- (4) To submit a further report to a future meeting of the Committee, as a matter of urgency, on the in-sourcing of the delivery of Culture, Sport and Leisure Services, addressing outstanding matters of priority, including but not limited to:-
 - (a) a full timeline of the intended plan for the in-sourcing of the services and key milestones;
 - (b) the actions being undertaken to rapidly address the harmonisation of terms and conditions of employment for staff;
 - (c) further assessment of potential Equal Pay implications as a result of the process;

- (d) the future governance arrangements, including the reporting framework to ensure that Elected Members have full scrutiny over the direction and provision of Culture, Sport and Leisure Services, and
- (e) the plans for engagement and consultation with recognised trade unions.

1.2 Culture and Leisure North Lanarkshire Board – 4 February 2020

- 1.2.1 The report considered by the Policy and Strategy Committee and the implications for the Board of Directors of Culture and Leisure North Lanarkshire was considered at a meeting of the Board on 4 February 2020. In terms of the decision taken by the Council, it was made clear by the Council Officer that the Directors of the Charity would take responsibility for the implementation of any dissolution and windup procedure of the Charity. The Board therefore agreed that it would, as a matter of urgency, take its own independent legal advice on the implications for and responsibilities of Board Directors in respect of the Council's decision. The Board was also advised that the Council had corresponded with the Office of the Scottish Charity Regulator (OSCR) regarding the decision.
- 1.2.2 At the request of the Board, the Council agreed to share the indicative process timeline for the in-sourcing of culture and leisure services to ensure harmonisation of both the Council and company's plans for integration. The timeline is contained in Appendix 1, and is an updated version of that issued to the senior officers of CLNL.

2. Report

2.1 Indicative Process Timeline and Actions – In-sourcing of Culture, Sport and Leisure Services

- 2.1.1 A full timeline detailing required in-sourcing actions during the pre-transfer period has been prepared and included as Appendix 1 to this report.
- 2.1.2 The key areas of the in-sourcing aspects of the associated workplan include:-
 - consents and approvals;
 - due diligence (workforce, finance and assets); and
 - the transfer agreement.

2.2 Programme Governance Structure & Workstreams

- 2.2.2 In accordance with the Internal Audit report from February 2017, which recommended a corporate approach to project management to ensure maximum output of projects in terms of cost, best value and managing risk, the in-sourcing of culture, sport and leisure services will adopt this approach in view of the significant change management inherent in the in-sourcing programme.

2.3 Roles and Responsibilities

- 2.3.1 The Project Sponsor, Senior Responsible Officer and Senior Supplier roles have been allocated. The following programme control documents are in the final stages of preparation:-
 - Project Brief;

- Communication Matrix; and
- Risk and Issue Register.

2.3.2 A Project Board, Project Team and Workstream Task & Finish Groups have been established, details of which are contained within Appendix 2 to this report. The specific workstreams will be as follows:-

- People;
- Communications (Internal and External);
- Assets;
- Due Diligence/Consents & Approvals;
- Future Service Model (Operations); and
- Future Service Model (Finance).

2.3.3 Each of the Workstream Task & Finish Group leads will be tasked with preparing individual timelines to work in accordance with the overall target transfer date for services of the end of August 2020.

2.4 Governance

2.4.1 The Programme Governance model to deliver the transition implementation plan is set out in Appendix 2.

2.4.2 It is further proposed that update reports on the in-sourcing of culture, sport and leisure services and scrutiny of these services come within the remit of the Community Empowerment Committee, and that the Head of Legal and Democratic Solutions makes the appropriate arrangements to put that proposal before Council.

2.5 Financial Planning

2.5.1 Financial Solutions has established a Workstream Group, Future Services Model (Finance) comprising senior finance officers from the Council and Culture and Leisure NL to consider and plan for the implications for financial administration following the in-sourcing of operations. This includes consideration of issues such as financial systems, financial governance and contractual arrangements to ensure alignment with the Council's processes and procedures.

2.5.2 In addition, work is ongoing to more fully understand the financial consequences of the in-sourcing decision for incorporation into the Council's financial planning assumptions for 2020/21 and beyond. Further updates will be incorporated into future reports to Committee.

2.6 Engagement and Consultation

Employees

- 2.6.1 A Workstream group will be established whose main task will be to establish, deliver and monitor a Communication Plan (Internal and External).
- 2.6.2 The existing arrangements will remain in place for CLNL Trades Union liaison.
- 2.6.3 In addition, the Trades Unions will be invited to attend meetings of the People Workstream group at which the information and consultation obligations and approach will be identified (Appendix 1 provides an overview of the required actions in respect of employees affected by the transfer).

2.7 North Lanarkshire Leisure Limited ('NLL')

- 2.7.1 NLL remains an active company and charity, but is not trading as its business and assets were transferred to CLNL on 22 June 2019. By letter dated 9 December 2019, notice was given to NLL under Article 50 of its Articles of Association to remove four independent directors with effect from 23 December 2019. This was done as these four independent directors had been removed from the bBard of CLNL in the public interest. As a consequence, the Board is no longer quorate.
- 2.7.2 NLL requires a quorate board to submit its accounts up to 31 March 2020 and to take appropriate and necessary action to remove NLL from the Scottish Charity Register and Companies House. Given the requirement to take steps to do so, legal advice was sought to have in place a functioning quorate board. The Chief Executive executed a sole member written resolution to amend and reduce the quorum.

2.8 Extension of Emergency Period:

- 2.8.1 Action was taken to appoint Culture and Leisure NL Partner and Independent Directors in accordance with a Special Resolution to 2 March 2020. This period has been extended to 30 April 2020 by execution of a further Special Resolution by the Head of Democratic and Legal Solutions in advance of Council being asked to appoint further partner directors on 2 April 2020.

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.
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4. Implications

4.1 Financial Impact

4.1.1 See section 2.5.

4.2 HR/Policy/Legislative Impact

4.2.1 As set out in section 2.

4.3 Environmental Impact

4.3.1 There are no environmental impacts arising from this report.

4.4 Risk Impact

4.4.1 The preliminary risk impacts of in-sourcing were outlined in the Risk Assessment in Appendix 1 to the Policy and Strategy report of 31 January 2020. As referred to in section 2.3, a risk and issue register will be completed, reviewed and updated as necessary.

5. Measures of success

5.1 The transfer completed within the timeframe set out in Appendix 1.

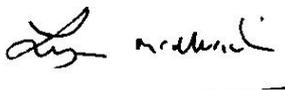
5.2 An approach to future service delivery which is fully aligned to The Plan for North Lanarkshire, and which represents Best Value whilst also safeguarding the furtherance of the charitable objectives of CLNL in the longer term.

6. Supporting documents

6.1 Appendix 1 – In-sourcing of Culture and Leisure Services – Indicative Process Timeline and Actions

6.2 Appendix 2 – In-sourcing and Future Governance Structure and Workstreams

6.3 Equality/Fairer Scotland Impact Assessment –
<https://www.northlanarkshire.gov.uk/index.aspx?articleid=33067>



Lizanne McMurrich
Head of Communities

IN-SOURCING OF CULTURE AND LEISURE SERVICES INDICATIVE PROCESS TIMELINE AND ACTIONS

Version: 001

Status: Draft

Date: 18 February 2020

North Lanarkshire Council

In-Sourcing of Culture and Leisure Services

Indicative Process Timeline and Actions

Time Period	Required Actions ¹	Status	Notes (Time Specific Actions)
February to April 2020	<ul style="list-style-type: none"> • Decision of Council to proceed • Inform OSCR of the decision to bring the assets and activities of CLNL back in house • Inform CIC Regulator of the decision to wind up CICs • Inform Boards of CLNL and CICs of the decision and commence liaison process • Diligence Process - Establish through diligence process the following in relation to each of CLNL and CICs <ul style="list-style-type: none"> ○ Assets (fixed and moveable) and what is required to transfer ○ Contracts – any issues in relation to transferability/change of control/pressure point entitling counterparties to terminate or renegotiate ○ Employees <ul style="list-style-type: none"> ▪ Confirm number of transferring employees, review of employee roles and functions, considering any atypical employment or contractor relationships, identifying key employees, reviewing contractual and any collective terms that will/may transfer (including remuneration, insurance benefits, redundancy terms) considering any pensions issues, considering any immigration issues, identifying any employee liabilities or claims, informing and identifying any consultation obligations with trades unions. 	<p>Complete</p> <p>Complete</p>	<ul style="list-style-type: none"> • Diligence assume 2 to 3 months • The employment due diligence documentation will include the 'Regulation 11' employee information which is required to be provided under TUPE at least 28 days before the transfer. <p>Information and consultation with the Trades Unions will be 'long enough' before the date of the transfer. It is anticipated that information will be provided at the commencement of the due diligence process and that any consultation will commence as soon as any measures have been identified.</p>

¹ Subject to further development

Time Period	Required Actions ¹	Status	Notes (Time Specific Actions)
	<ul style="list-style-type: none"> ▪ Consider what 'measures' the Council is likely to take in respect of the employees (including any changes to terms, benefits, work location, working environment, reporting lines, etc) as these will form the basis of the TUPE consultation process. ○ Liabilities – current and future, and impact of transfer ○ Tax position/issues • consider any implications of results of diligence on overall structuring of transfer of CLNL and CICs assets and activities to the Council, i.e.tax – formulate transfer structure and methodology • consider and agree optimum structure post transfer <ul style="list-style-type: none"> ○ Where should assets and employees sit within Council structure? ○ What are the implications of doing so: <ul style="list-style-type: none"> ▪ Employees – consider implications, and detail how Trades Unions will be consulted with. ○ Once transfer and post transfer structuring completed - liaise with OSCR/CIC Regulator on specific requirements – e.g. ring fencing of charitable assets 		
April to May 2020	<ul style="list-style-type: none"> • Discuss proposed structure with and obtain consent/support of: <ul style="list-style-type: none"> ○ OSCR - Advising OSCR of the strategic plan, and how the proposed transfer will be implemented must allow sufficient time for OSCR to raise any observations, in particular OSCR will need to be comfortable with the amendment to the Articles and how the assets will be held following the transfer to the Council. ○ CIC regulator – similar to OSCR ○ Pensions Regulator ○ Boards of CLNL and CICs • Obtain any required tax clearances from HMRC 	Ongoing communication/ engagement with OSCR	<ul style="list-style-type: none"> • Specific OSCR consent is only required in relation to the winding up of CLNL, and consent must be sought within 42 days of the proposed wind up. With that in mind however, OSCR can refuse consent if they are not satisfied that the assets will continue to be used for charitable purposes, and therefore early engagement with OSCR is in place • HMRC normally respond to tax clearance requests within 30 days although they may take longer for complex clearances
May to August 2020	<ul style="list-style-type: none"> • Effecting transfers: 		<ul style="list-style-type: none"> • There are no minimum time limits for TUPE consultation, but this must take place "long

Time Period	Required Actions ¹	Status	Notes (Time Specific Actions)
	<ul style="list-style-type: none"> ○ Following identification of assets and contracts, prepare and sign asset transfer agreements ○ Support Boards of CLNL and CICs to pass appropriate resolutions of companies ○ Submit any Land and Buildings Transaction Tax (LBTT) returns in relation to the transfers and pay any LBTT (within 30 days after transfer, but normally done immediately after transfer) ○ Register transfers ● TUPE process - updated 'Regulation 11' information and final employee list to be provided to Council. Information and/or consultation process with trade union representatives in relation to the TUPE transfer. This can be a joint process, involving both employers, if both parties agree to this approach. 		<p>enough" in advance of the transfer. The length of the process will therefore depend on the scale and impact of proposed measures.</p>
August to October/ November 2020	<ul style="list-style-type: none"> ● Post transfer: <ul style="list-style-type: none"> ○ Ensure that companies have submitted all tax returns and paid all outstanding tax (HMRC normally accept early submission of returns and payment of tax) ○ Agree the final tax position with HMRC before the application for striking off is submitted ○ Ensure that companies do not trade or incur any liabilities for at least 3 months ○ Directors' declaration ○ Application to Companies House to strike companies off. ○ Advise OSCR within 3 months of the transfer of assets being completed, for OSCR to remove CLNL from the register. ● End date – striking off each of the three companies involved. 		<ul style="list-style-type: none"> ● Specific OSCR consent is only required in relation to the winding up of CLNL, and consent must be sought within 42 days of the proposed wind up. ● Required 3 months from cessation of trading until CLNL can be struck off ● Require to advise OSCR within 3 months of transfer

In-Sourcing and Future Operating Model

Programme Governance Structure & Workstreams

