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**CHARITABLE LEISURE & LIBRARIES TRUST - FULL BUSINESS CASE**

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**1.0 EXECUTIVE SUMMARY**

- 1.1 At the Council budget meeting in February 2016, the decision was taken to pursue and investigate the creation of a Charitable Trust (CT) to deliver Leisure & Library services in Argyll and Bute. EY was appointed through a competitive tender process to deliver a Full Business Case (FBC) to explore the service transformation options available to the Council for its Leisure and Libraries services. The FBC has now been completed and is attached for members' consideration.
- 1.2 It follows best practice set out by HM Treasury's Green Book Guidance five case model which is followed by the Scottish Government. The Economic case identified that a cost benefit analysis of the status quo compared to the transfer of services to a CT shows that the Trust option provides an indicative net benefit across a 25 year period at £8.6m in Net Present Value Terms.
- 1.3 The Commercial case identifies three options for the corporate structure of a CT and identified a Company Limited by Guarantee as the recommended option. The relationship between the Council and the CT would cover the Lease agreements for building assets, Service Level Agreements for support services, an operating agreement and the level of management fee. The Office of the Scottish Charity Regulator (OSCR) guidance mandates that the Trust Board be made up of a minority of Council elected members and a majority of independent representatives. A Board of seven individuals is recommended. With the creation of the CT and the Transfer of Undertakings, TUPE (Protection of Employment) would apply to 247 posts within the scope of the proposal, equating to 155 fte jobs.
- 1.5 The Financial case estimated the potential total of NDR and VAT savings in the first year to be in the range of £0.572m to £0.702m, and a prudent assumption of £0.636m has been applied. The estimated overall projected management fee payable to the Trust in year 1 is £5.716m.
- 1.6 The Management case sets out how the transfer to a charitable model of service delivery is achievable and can be delivered successfully. A set of key next steps are proposed and, if the FBC is approved, the implementation stage would take approximately 9 – 12 months.

1.7 It is recommended that the Community Services Committee:

- a) approve the Full Business Case prepared by Ernst and Young.
- b) approve that the next steps to implementation of a Charitable Trust set out in the Full Business Case be taken forward within the proposed governance arrangements.
- c) recommends to Council the approval of the Charitable Leisure & Libraries Trust Full Business Case.

**CHARITABLE LEISURE & LIBRARIES TRUST FULL BUSINESS CASE**

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**2.0 INTRODUCTION**

2.1 At the Council budget meeting in February 2016, the decision was taken to pursue and investigate the creation of a charitable trust to deliver Leisure & Library services in Argyll and Bute. EY was appointed through a competitive tender process to deliver a Full Business Case (FBC) to explore the service transformation options available to the Council for its Leisure and Libraries services. The FBC has now been completed and is attached for members' consideration.

**3.0 RECOMMENDATIONS**

It is recommended that Community Services Committee:

- a) approve the Full Business Case prepared by Ernst and Young.
- b) approve that the next steps to implementation of a Charitable Trust set out in the Full Business Case be taken forward within the proposed governance arrangements.
- c) recommends to Council the approval of the Charitable Leisure & Libraries Trust Full Business Case.

**4.0 DETAIL**

4.1 In May 2016, EY were appointed by the Council to develop a business case that follows best practice; undertake technical analysis on the potential VAT and NDR savings; and advise the Council on how the preferred option could be implemented.

4.2 The approach to the FBC follows best practice as set out by the HM Treasury's Green Book Guidance five case model which is followed by the Scottish Government. The five cases are:-

- Strategic case – what is the case for change?
- Economic case – what is the best option for change?
- Commercial case – what is the optimal operating and commercial

structure for delivery?

- Financial case – What are the financial implications of the intervention?
- Management case – how will the option for change be delivered?

4.3 A Charitable Trust is an independent, not-for-profit arm's length external organisation, widely used by Local Authorities to operate a range of public services. They offer a range of financial and commercial benefits that can help to sustain the future of these services in the face of the pressures on public spending. The scope of the services contained within the model is the four Council operated swimming pools and fitness facilities, one sports centre, nine community halls and centres, eleven libraries and one mobile service. These services are critical in helping to improve the overall health, fitness and general wellbeing of residents, and are an extensively used and valued part of community life. Delivering these services through a CT creates the opportunity for a new delivery model that can help to reduce pressures from budgetary constraints and growing customer expectations. The majority of Scottish Councils have adopted this approach for a variety of service activities. This defined scope offers the optimum benefit from economies of scale in this dispersed rural area. Some of the key benefits associated with the transfer of services to a CT include:-

- A single focused and branded body with clarity of outcomes
- Ability to diversify and react quickly to market forces
- VAT and NDR savings
- Sustainability of service provision
- Commercial revenue growth and improved financial performance
- Independence and increased access to other funding streams.

4.4 The Economic case reviewed the benefits of continuing to operate the services under the status quo compared to the transfer to a charitable organisation. The case has highlighted that the creation of a CT is the preferred option for the delivery of Leisure and Library services. The key drivers for changing the current delivery model include:-

- The potential ability to use savings for reinvestment into services and assets
- The ability to hire new skills and focus on the commerciality of the services available, allowing them to adapt improve quality
- The Council sets the strategic direction, provides oversight and ensures the trust's objectives and operational performance are aligned through its KPI regime.

4.5 When compared against the status quo, the Trust demonstrates value for money:-

- The net benefit across a 25 year period was indicatively estimated at £8.6m in NPV terms
- This financial benefit is the result of VAT and NDR savings against the

additional costs of running the Trust. These savings are unlocked with the selection of the Trust as the preferred delivery option.

- 4.6 The Commercial case examines three options for a trust structure, a company limited by guarantee; a Scottish Charity Incorporated Organisation and an Industrial and Provident Society. The company limited by guarantee is recommended and it offers the protection and familiarity of the Companies Act, supported by clear and established legal precedents over the rights and obligations placed on the board members. The Trust would be a wholly owned subsidiary of the Council and it is anticipated that there would be a charitable Trading subsidiary to undertake all non-primary purpose activities.
- 4.7 OSCR guidance mandates that the Charitable Trust Board would be made up of a minority of Council elected members and a majority of independent representatives. It is recommended that the board comprises 7 individuals. The Chair would be an independent representative and the Trade Unions could be represented. It is noted that the recruitment of the Board should be designed to ensure an optimal mix of skills and experience to create a dynamic team ethos.
- 4.8 The relationship between the Council and the Trust would have its basis through a number of contractual documents:-
- Lease agreements – ownership of the building assets will be retained by the Council and will be leased or licensed to the trust
  - SLA – the Trust will require a range of support and administration services which it will initially procure from the Council under a number of SLAs, commonly at nil cost
  - Operating Agreement – sets out the terms of the management agreement between the parties, contractual obligations, service specifications and performance information
  - Management fee – the Council would pay for the services of the Trust in the form of a management charge.

Despite the contractual basis of the relationship it is important that the Trust is supported by the Council, particularly in the early years and so the Trust must be set up in such a way that the advantages of its arms-length structure and charitable status are maximised. The maintenance agreement will be a key part of this and, typically, an agreement is reached with the responsibility for repairs and maintenance being shared, with the Trust responsible for minor works up to a pre-agreed level.

- 4.9 The FBC highlights and reinforces the message that the role of staff will be critical to the successful establishment and operation of the Trust. 247 posts are within scope of the business case and with TUPE applying staff will transfer with their existing terms and conditions of employment. The Trust will apply to be given admitted body status within the Strathclyde Pension Fund to enable employees to continue to participate in the Local Government Pension Scheme with no changes to pension provision and full service protection. It is noted that

issues such as TUPE and Pensions will need to be appropriately managed.

- 4.10 The Financial case is based on the baseline budget for 2015/16 of the services in scope. The EY analysis highlights that the combined assets have an income of £2.077m and costs of £9.905m. This results in a net deficit of £7.825m.
- 4.11 The VAT position has been modelled based on a range of savings depending on the acceptance by HMRC of the proposed approach. It is critical that the VAT position is agreed with HMRC as soon as possible as it is not possible to provide certainty on the potential VAT savings until HMRC has confirmed its approval. Due to its charitable status, certain income the Trust generates will be exempt for VAT purposes under the VAT Sporting Services and Culture Services exemptions, and this can provide VAT savings in the Trust. Three scenarios were developed and the overall potential NDR and VAT savings range from £0.572m to £0.702m, with the prudent expectation being £0.636m. Taking account of non-cash item adjustments, the management fee in the first year would be £5.716m.
- 4.12 The final case, the Management case, demonstrates that the implementation of the CT is achievable and can be delivered successfully in accordance with best practice. If members approve the FBC and agree to proceed to a CT, a range of time consuming statutory and regulatory tasks are set out which will require to be undertaken. EY forecast the implementation phase in the lead up to go-live will take approximately 9 – 12 months. These workstreams include:-
- Shadow Board and Chief Officer recruitment
  - Developing legal documentation, including incorporation and constitutional papers, Asset lease agreements and Service and Support SLAs and specifications
  - Communications strategy
  - Admission to Strathclyde Pension Fund
  - OSCR application.

## **5.0 CONCLUSION**

- 5.1 The FBC for the creation of a CT to deliver Library and Leisure services in the area offers a transformational opportunity to deliver quality services, enhance customer focus and deliver savings without any negative impact on frontline services. The facilities within the scope of this project are highly valued and well used by residents and visitors to Argyll and Bute and this proposal is an excellent strategic fit with the key Single Outcome Agreement objectives for the area.
- 5.2 Experience from other successful examples of this form of service delivery demonstrates that an effective working relationship between the leading personnel in the Council and the Trust is the key driver in achieving desired outcomes. It is in both parties interests to create a win-win situation for the benefit of all stakeholders and a Trusted Partner approach is essential in moving forward.

## **6.0 IMPLICATIONS**

- 6.1 Policy – This proposal is a key element of SOA outcome 5 to ensure People live active, healthier and independent lives.
- 6.2 Financial - the proposal offers a prudent ongoing level of saving from NDR and VAT of £0.636m
- 6.3 Legal - The CT will require to comply with all relevant Charitable and Companies Law
- 6.4 HR – The FBC proposes no job losses and the TUPE of 247 posts to a CT
- 6.5 Equalities – The proposal complies with Equalities guidance
- 6.6 Risk – A detailed risk register will be maintained for the project implementation phase
- 6.7 Customer Service – The proposal offers the opportunity to sustain and enhance customer services

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18<sup>th</sup> October 2016

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## **APPENDICES**

Appendix 1 The Full Business Case for a Charitable Leisure & Libraries Trust  
produced by EY