

EXECUTIVE BOARD – 21 JULY 2015

Subject:	Nottingham Castle and future management arrangements for the Museum and Gallery Services		
Corporate Director(s)/ Director(s):	John Kelly, Corporate Director for Community Services Hugh White, Director of Sports, Culture and Parks		
Portfolio Holder(s):	Councillor Dave Trimble, Portfolio Holder for Leisure and Culture		
Report author and contact details:	Nigel Hawkins, Head of Culture and Libraries 0115 8764969 nigel.hawkins@nottinghamcity.gov.uk		
Key Decision	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subject to call-in	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Reasons: <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision			<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Total value of the decision: £150,000			
Wards affected: All		Date of consultation with Portfolio Holder(s): 19 June 2015	
Relevant Council Plan Strategic Priority:			
Cutting unemployment by a quarter			<input type="checkbox"/>
Cut crime and anti-social behaviour			<input type="checkbox"/>
Ensure more school leavers get a job, training or further education than any other City			<input type="checkbox"/>
Your neighbourhood as clean as the City Centre			<input type="checkbox"/>
Help keep your energy bills down			<input type="checkbox"/>
Good access to public transport			<input type="checkbox"/>
Nottingham has a good mix of housing			<input type="checkbox"/>
Nottingham is a good place to do business, invest and create jobs			<input type="checkbox"/>
Nottingham offers a wide range of leisure activities, parks and sporting events			<input checked="" type="checkbox"/>
Support early intervention activities			<input type="checkbox"/>
Deliver effective, value for money services to our citizens			<input checked="" type="checkbox"/>
Summary of issues (including benefits to citizens/service users):			
<p>The report seeks approval for the Council to consider the future Management of Nottingham Castle and the possibility of transferring it to a not for profit organisations (such as a Trust), whilst retaining the management of the remaining Museum and Gallery Services in-house.</p> <p>This decision has partly arisen due to the requirements needed in order to help determine the Nottingham Castle Phase 2 Heritage Lottery Fund (HLF) submission being worked on, and brings back to the Executive Board future management and governance considerations initially outlined within the Nottingham Castle HLF submission report brought to the Executive Board on 19 November 2013.</p> <p>In the previous report it was clearly stated that the Nottingham Castle development scheme would only be financially viable if the Castle was to be operated by a non-profit distributing organisation, due to contingent VAT liabilities that the Council would become responsible for if it was to remain both the developer and operator for a redeveloped Nottingham Castle site.</p> <p>The issue has arisen due to statutory partial exemption which limit the amount of VAT a Local Authority can recover on its exempt activities. Castle income is 47% exempt as it has exercised cultural exemption on its admissions. Therefore any significant capital expenditure on any asset the Council owns that gives rise to exempt supplies needs to be carefully managed. Due to the size and scale of this development the Council is unable to manage its partial exemption position on the Castle development, and stay within the allowed limits for VAT recovery. The Cultural VAT exemption designation is a valuable concession for the City Council as it enables the Council to retain 100% of its admission income from Cultural, Leisure and Heritage trading without needing to return the required VAT element to HMRC.</p>			

In order to determine the most cost efficient operating model for Nottingham's Museum and Gallery Service, including Nottingham Castle, Focus Consultants Ltd were engaged to undertake an outline business modelling exercise to help determine the most cost efficient service delivery models by which the Museum and Gallery Service could be operated in the light of the Cultural VAT exemption issue.

Exempt information:

An appendix to the report is exempt from publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 because it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because it could prejudice future negotiations around the selection of operators for the Nottingham Castle service.

Recommendation(s):

- 1 To note that the recommendations are put forward, in part, to support the current Stage Two HLF bid work for the development of Nottingham Castle, the largest heritage development project in the UK, as well as the entire City Museum and Gallery Service.
- 2 To approve commencing a process of transfer for Nottingham Castle to a suitable not-for-profit organisation(s), to become the future management operator and to retain the rest of the Museum and Gallery Service in house.
- 3 To approve the development a Full Business Case (FBC) to support this process and to report back to Executive Board if the option agreed falls outside of the Council's current Medium Term Financial Plan, in line with Focus Consultants options appraisal report findings
- 4 To grant dispensation from Contract Procedure Rule 5.1.2, in accordance with Financial Regulation 3.29, to appoint specialist advisers for legal, finance and VAT, as required to support the development of the FBC and the operator selection process including the required full contract and legal documentation.
- 5 To delegate authority to the Corporate Director for Community Services, in liaison with the Portfolio Holder for Leisure and Culture, to negotiate suitable, lease, contract and terms and conditions with selected organisation(s) to best support the long term sustainability of the City's cultural offer and best protect Nottingham City Council and citizens interests.
- 6 To commit up to £0.150 million as funding towards supporting this FBC and selection process and the appointment of specialist advisers as set out in the exempt appendix and section 5 of this report.
- 7 To note that through any negotiations, ownership of Nottingham Castle and its museum collections displayed within, remain the property of Nottingham City Council on behalf of its citizens.

1 REASONS FOR RECOMMENDATIONS

- 1.1 To enable the authority to implement the changes recommended in the Options Appraisal commissioned from Focus Consultants Ltd to assist the Council determine the most cost and tax efficient future delivery models for the operational management of the Council's current Museum and Gallery Service.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 In March 2015, Nottingham City Council appointed Focus Consultants Ltd to undertake an Options Appraisal to assess alternative governance models for the Nottingham Museum and Gallery Service.
- 2.2 The purpose of the commission was to identify and assess the options available for the future delivery of the City Council's Museum and Gallery

Service in order to provide the most tax efficient and economically viable model of operations in order to meet local and national aspirations, funder and stakeholder agreements around the future delivery of Nottingham's well regarded Museum and Gallery Service.

2.3 The need for the work is driven by the proposed redevelopment of Nottingham Castle for which the Council secured a Stage 1 pass from the HLF in 2014.

2.4 Many Local Authority run cultural services are now exploring the benefits that derive through managing its services in different ways and looking at governance models that enable it to optimise income, reduce costs and encourage entrepreneurial activity. Cities or areas that have already transferred all or parts of their museum services out of the Local Authority control include York, Sheffield, Luton, Bristol, Birmingham and Derby.

2.5 The scope of the appraisal commissioned was:

- to review the existing service delivery within Culture and Sports for the management and operation of its Museum and Gallery Service, including all aspects of collections management, learning, community engagement and other identified services e.g. the impact on Parks and Open Spaces Service;
- to identify existing models of service delivery in the museum sector that could inform the recommended approach, and assess their advantages and disadvantages;
- to assess the business viability for each alternative delivery model identified;
- assess potential financial impact in running the service in different management models.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

3.1 The options appraisal considered a wide range of different configurations on the way the service could be managed in order to assess potential impacts this might have for the City Council and the future management of the Service. This included:

1. remain in house;
2. transfer ALL of Nottingham Museum and Gallery Service to a not for profit company (charitable Trust);
3. Nottingham Castle to just transfer to a not for profit company, with the remainder services being managed in-house;
4. integration with an existing third party / established Trust
5. contract out with a commercial private sector operator.

3.2 All of the options were scored against a detailed list of criteria which determined that options 2 and 3 best met Nottingham City Council's requirements.

3.3 The difference in the business case for each was marginal, However, Option 3 is preferable to be pursued due to the step change that the Nottingham Castle Development now requires. This would enable a successful operator to focus exclusively upon delivering the improvement and development outputs being sought from the Nottingham Castle redevelopment and not dilute attention upon the other important heritage assets, which offer a varied and different cultural offer in the City.

4 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

4.1 In exempt appendix.

5 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND INCLUDING LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

- 5.1 The appointment of the operator of the Castle must be undertaken in accordance with applicable procurement rules. The rules which apply will depend on the type of contract to be offered to the operator. The procedural requirements to award a concession contract are less onerous than a services contract. In either case the contract opportunity will need to be advertised and a selection process undertaken.
- 5.2 The Legal Services Team will agree with the project team the most suitable external legal advisers for the project depending on the required level of expertise and experience in this particular field of work.
- 5.3 Early consideration should take place regarding the employment implications, in particular regarding the potential transfer of City Council employees to a new provider by operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE'), together with the requirement on the Council under the Best Value Authorities Staff Transfers (Pensions) Direction 2007 ('2007 Direction') to require an incoming provider to provide pension protection to transferring employees by way of ongoing access to the Local Government Pension Scheme ('LGPS') or scheme certified by the Government Actuary's Department as broadly comparable to LGPS.
- 5.4 Any planned timetable for transfer should include:
- identification of current LGPS pension deficit (to inform decision as to steps to be taken regarding pension deficit; and
 - suitable consultation in accordance with requirements of TUPE.

6 HUMAN RESOURCES CONSIDERATIONS

- 6.1 If the Council were to consider a different operating model, then it is likely that TUPE regulations would apply to the employees whose posts are linked to duties or activities of the service that is transferring. TUPE provides protection of terms and conditions of employment when employees transfer to a new employer, so that any employee affected by a potential transfer does not suffer a detriment to their pay and conditions of employment. This would require the service to undertake an assessment of roles, duties and time spent at each site to determine who may be 'in scope' in relation to any potential transfer under TUPE.
- 6.2 This also extends to Pension terms, where any new organisation would be required to provide a pension scheme that is broadly comparable to the one that employees currently enjoy. Given the complications in finding a broadly comparable scheme to the LGPS and the assessments required from the Government Actuary Department to assess comparability, the preferred option would be for any new provider to operate with Admitted Body Status to the County Scheme. Any broadly comparable scheme would require a current, valid comparability certificate, issued by GAD.

- 6.3 Pension records are currently being verified ready for completion of an actuary assessment for pensions. It is unlikely that this assessment to identify pension liabilities (deficit) along with future employer costs will be available until after the Executive Board decision. Once the actual pension liabilities have been notified by the actuary then a further decision would be required as to how this is dealt with upon transfer to any new organisation.
- 6.4 All of the above would require the service to undertake a period of consultation with employees and their representatives in relation to the transfer and its implications.

7 SOCIAL VALUE CONSIDERATIONS

- 7.1 Founded in 1878, Nottingham City Museum and Gallery Service was the earliest municipal museum service founded outside of London. It was established with the opening of the Nottingham Castle Museum and Art Gallery on 3 July 1878 to inspire the public and local textile manufacturers with high quality design by collecting and displaying the best arts and crafts from around the world.
- 7.2 Since it was founded Nottingham City Council Museum and Gallery Service has undergone fundamental changes, and this continues to be the case today.
- 7.3 The service continues to flourish nationally and the numbers of partners and national organisations seeking new collaborations is growing. Visitor numbers and income generation across the Service is growing and had helped to meet the challenges of the economic environment over recent years.

8 REGARD TO THE NHS CONSTITUTION

- 8.1 N/A

9 EQUALITY IMPACT ASSESSMENT (EIA)

Has the equality impact been assessed? (Stephen Chartres is preparing)

- (a) not needed (report does not contain proposals for new or changing policies, services or functions, financial decisions or decisions about implementation of policies development outside the Council)
- (b) No
- (c) Yes – Equality Impact Assessment attached **X**

Due regard should be given to the equality implications identified in any attached EIA.

10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

- 10.1 None

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

- 11.1 Executive Board Report – Submission of Heritage Lottery Fund Bid (Stage 1) – published 20 November 2012.

- 11.3 Executive Board Report - Nottingham Castle – Re-submission of Heritage Lottery Fund Bid - published 19 November 2013

- 11.4 Focus Consultants – Options Appraisal Study dated June 2015 - In Exempt Appendix

12 OTHER COLLEAGUES WHO HAVE PROVIDED INPUT

Andrew James – Team Leader, Commercial & Contracts, Legal
Sue Oliver – Category Manager Construction & Major Projects, Procurement
Paul Slater – Service Re-design Consultant, HR
Tina Adams – Finance Manager, Capital & Tax, Finance
Steve Ross – Finance Analyst, Finance
Richard Hamblin – Castle Project Director, Castle Museum
Hugh White – Director, Sport & Culture