

PERTH AND KINROSS COUNCIL

24 February 2016

**Securing the Future for Culture and Sport
Implementation Update**

**Report by Senior Depute Chief Executive ECS (Equality, Community Planning
and Public Service Reform)**

PURPOSE OF REPORT

This report provides the Council with an update on the implementation of new strategic commissioning arrangements for culture and sport, following approval by the Council in July 2015 of a recommended option for new arrangements.

1. BACKGROUND / MAIN ISSUES

- 1.1 [Report 14/438](#), approved by the Council on 8 October 2014, set out a new level of ambition for developing Perth and Kinross as a major tourist destination over the next decade, and recommended that an options appraisal was completed to identify the best commissioning and delivery arrangements for future provision of culture and sport. New arrangements needed to be capable of delivering the Council's increased level of ambition in relation to tourism growth whilst also protecting our substantial investment in culture and sports provision and delivering agreed efficiency savings of £542,000 from April 2016 onwards.
- 1.2 Report [15/295](#), approved by Council on 1 July 2015, set out the findings of the options appraisal which examined 5 options for future commissioning and delivery arrangements. It recommended **option 4**, within which:
- All sport and leisure services commissioned by the Council, including Active Schools and Sports Development, will be delivered by Live Active Leisure (LAL).
 - Performing arts commissioned by the Council including management of Perth Concert Hall and Perth Theatre and some Creative Learning will continue to be delivered by Horsecross Arts (HX).
 - Museums and Galleries, Libraries, Archives/Local Studies, Arts Development and some Creative Learning will be delivered by a new Culture Trust.
 - Retention of the Instrumental Music Service (IMS) within Education and Children's Services¹.
- 1.3 Option 4 was the recommended option because it was the most capable of delivering an improved customer experience (through a single integrated sports 'offer' to be delivered by LAL and complementary performing and visual

¹ The options appraisal identified VAT disadvantages if the IMS was transferred to a Trust, in addition to which opportunities to continuously improve the service by integrating self-evaluation processes within the wider school quality assurance framework would be reduced.

arts remits to be delivered by HX and a new Culture Trust) and could be implemented within the Council's required timescales. However **option 5**, within which a single Culture Trust would deliver all cultural provision also scored highly in the options appraisal. It did not emerge as the final preferred option because HX had significant concerns about the scale of change involved within a tight timescale at a stage when it is focused on delivery of the Perth Theatre redevelopment, and is also reviewing its operating model in light of recent funding decisions from Creative Scotland. Report 15/438 therefore recommended a further review of this option in 2017/2018.

1.4 In recommending option 4, the potential to achieve savings of £160,000 from shared service arrangements across all 3 Trusts from April 2016 onwards was also identified.

1.5 The remainder of this report provides a progress update on the implementation of option 4 as instructed by Council on 1 July 2015. A Project Board chaired by the Director (Social Work) was established to oversee implementation with 4 key workstreams accountable to the Board:

- Transfer of Sports Development and Active Schools functions to LAL
- New contract and commissioning arrangements
- Creation of a new Culture Trust
- Shared Services

1.6 The specific implementation tasks delivered by workstreams were as follows:

- Transfer of the Sports Development and Active Schools functions to LAL.
- Establishment of a new Culture Trust as a charitable company, with the Council as its sole member, with transfer of the libraries, archives, local studies, museums, galleries and arts development (including dance development) functions to the new Trust.²
- All 136 staff in scope will transfer to the new Culture Trust and LAL, including determining pension arrangements for all staff transferring to LAL and the new Culture Trust, in line with requirements under Transfer of Undertakings and Protection of Employment legislation (TUPE).
- Transfer of management responsibility for 17 culture and 2 sports buildings to the new Culture Trust and LAL.
- Implementation of new corporate support functions for the new Culture Trust, on the premise that option 5 will be re-examined in 2017/2018 and therefore a 'de minimis' approach to developing stand-alone corporate functions should be taken, with the Council continuing to provide corporate services on a status quo basis over the first year and prior to the further review in 2017/2018 which the Council has instructed.
- Implementation of new contractual arrangements between the Council and all 3 Trusts with effect from 1 April 2016. These contracts will be negotiated and awarded within the appropriate expenditure limits which are delegated to Education and Children's Services (as is currently the case for contracts with Live Active Leisure and Horsecross Arts, and as set out in para 2.20, below).

² Ownership of the museum and gallery collections and of these buildings remains with the Council.

- Identification of shared service arrangements across all 3 Trusts to achieve the required £160,000 efficiency saving from April 2016 onwards.
- Establishment of a new Joint Advisory Group, drawing together expertise from both the culture and sports sectors alongside community representation and replacing existing partnerships, from April 2016.

2. PROGRESS ON IMPLEMENTATION TASKS

Transfer of Sports Development and Active Schools functions to LAL

- 2.1 The Council's Sports Development team provides advice and capacity building support to local community sports clubs and those wishing to develop Community Sports Hubs (CSH) in their localities; oversees an accreditation scheme for local sports clubs; provides advice on development of performance pathways into sport for talented individuals; develops and oversees sports coaching and volunteer programmes for adults and young people; provides administrative support to Perth and Kinross Sports Council and monitors the SLA with the Sports Council; and organises some events and programmes including the Adventure Festival; some gymnastics events and outdoor activities. CSH development is overseen by a dedicated post part-funded by **sportscotland** until 2016/2017.
- 2.2 The Active Schools team provides extra-curricular opportunities for children and young people to participate in a range of sports; provides advice on performance pathways into sport for talented young people and delivers some programmes and activities for children and young people aimed to increase participation universally and amongst key target groups including girls and young women. The Active Schools programme is part funded by **sportscotland** (£316,200 in 2015/2016).
- 2.3 Service specifications for both functions were developed (via the Contracts and Commissioning Workstream) with strong staff input to ensure all the Council's ongoing requirements are fully reflected in the service specification. Contract negotiations with LAL are ongoing. **Sportscotland** are being regularly updated on the implementation process. The Council will remain accountable directly to **sportscotland** for delivery of outcomes and targets set for Active Schools and CSH, although activity will be delivered by LAL. There will be regular strategic meetings between **sportscotland**, the Council and LAL, chaired by the Council, to report on delivery in respect of Active Schools and CSH, and to discuss wider strategic issues of mutual importance.

Establishment of a new Culture Trust

- 2.4 A new Trust, *Culture Perth and Kinross* (CP&K) was established as a limited company in October 2015, with a Chair and initial Board members appointed by the Council in its capacity as sole member. Further Board appointments will be a matter for the Chair and Board, with a Nominations Committee recommending appointments, re-appointments and removals to the Council. Charitable status has been applied for. An application for registration of the company as a charity has been submitted to the Office of the Scottish Charity Regulator (OSCR) and it is expected that this will be granted within the next few weeks. Under TUPE, the Service Manager for Culture will transfer to

CP&K on 1 April 2016 to assume the role of Chief Executive Officer for the Trust. All other staff in scope of the functions to transfer to CP&K will also transfer under TUPE on 1 April 2016.

TUPE transfer and pension arrangements for all staff in scope

- 2.5 All 136 staff in scope of these functions will transfer on 1 April 2016. The relevant workstream engaged staff from all functions alongside senior staff from LAL, and the new Chair of CP&K, in developing and implementing the transfer and ensuring business continuity. Regular staff communication was carried out throughout the process and staff engagement remained high throughout.
- 2.6 LAL has 'admitted body status' to the Local Government Pension Scheme (LGPS) meaning that pension arrangements for all Council staff transferring to LAL are unaffected by the transfer.
- 2.7 We have applied for a admitted body status for CP&K to the (LGPS) For the Admission to be granted, Council are asked to underwrite the liabilities for CP&K. It is hoped that this will be a cost neutral move for the Council: this concerns employees who would otherwise have remained in Culture Services and so the transfer should not affect the overall Pension Scheme costs. There is a risk that in the unlikely event that CP&K fail to be able to meet its own pension liabilities, for example if CP&K were to be financially insolvent, then PKC would be liable for the pension scheme costs. Whilst Council could choose not to make provision for this pension, there is an obligation under TUPE to provide a broadly comparable pension scheme along with a strong moral obligation.
- 2.8 If granted, the Admission for CP&K will allow for employees joining CP&K after the transfer date to become members of the LGPS. The alternative would be to close the scheme to new employees and for CP&K to source an alternative pension scheme for its new employees.
- 2.9 The benefits of allowing new staff to join the LGPS are that it will prevent a 2 tier pension entitlement and represents the most pragmatic solution in the next 2 years until the planned review of trust arrangements in 2017/2018. It also reflects the practice of LAL and HX.
- 2.10 The disadvantage of allowing new staff to join the LGPS are that Tayside Pensions Fund may decide to apply different assumptions to CP&K from those which are applied to the Council, which may result in different costs when underwriting the CP&K transferring employees. A further disadvantage is that as payroll provider to CP&K, PKC would need to reconfigure its payroll module to accommodate this change in pension provider incurring an additional cost.
- 2.11 It is proposed that Council underwrites the pension liabilities for both existing and new employees of CP&K until the planned review of trust arrangements in 2017/2018, when the ongoing pension arrangements can be revisited.

Transfer of management responsibility for 17 culture and 2 sport buildings to CP&K and LAL

- 2.12 In order to achieve £332K savings from non-domestic rates (NDR), as a substantial contribution to the required overall £542,000 saving, the buildings from which the services transferring to the respective Trusts are delivered must be occupied by them. Accordingly, LAL and CP&K become tenants of the relevant buildings set out at Appendix 1 to this report. The Strategic Policy and Resources Committee approved the transfer of these properties and key Heads of Terms on 10 February 2016 (Report No 16/49 refers). 5 of the properties were Common Good, and whilst it is noted that ownership of the properties is not transferring, the appropriate Common Good Fund Committees will be apprised on 24 February 2016 (Report No 16/49 refers) of the intention to transfer management responsibilities for the properties to CP&K.
- 2.13 The project has identified that further NDR savings may be realised in relation to the transfer of management responsibility of some additional sports facilities to Live Active Leisure and this is currently being explored.

Implementation of new corporate support arrangements for CP&K

- 2.14 Report [15/295](#) paragraph 4.2 stated that PKC would continue to provide Support Services to the new Culture Trust in the short to medium term. The provision of these services would be at no significant additional cost to PKC. In accordance with OSCR guidance, the new Culture Trust would, over time, review the provision of these services and decide on the method of delivery that best suits the requirements of the Trust.
- 2.15 This establishes that PKC will continue to provide Support Services to the new Culture Trust in the short to medium term with no charge to CP&K. PKC would normally charge for services provided to external clients. However, it has been agreed that this charge would be waived for the first year and the financial consequences for both PKC and CP&K reviewed when the Trust arrangement is reconsidered by the Council, HX and CP&K in 2017/2018.
- 2.16 Therefore the following corporate support functions will continue to be provided by the Council to CP&K from April 2016 for a period of 1 year, until the outcome of the review in 2017/2018, on a “status quo” basis as this represents the most cost effective way of achieving the NDR savings. Where additional costs are incurred by the Council in addition to the existing cost of service provision as a result of the creation of CP&K these will be recharged to the Trust. the following services were previously required to support Culture Services within ECS:
- Finance
 - Human Resources Advice
 - Payroll
 - Legal advice for operational issues
 - Property Services and Maintenance services
 - Fleet Maintenance
 - Health & Safety
 - ICT

- 2.17 The following corporate support functions have been established as 'stand alones' for CP&K and will be commissioned by CP&K independently of the Council:
- External Audit
 - External Accountancy advice and support
 - VAT advice and VAT Losses
 - Legal Advice to Board
 - Directors Insurance
 - Employee and Public Liability Insurances
 - Other insurances (i.e. fleet vehicles and contents)
- 2.18 The cost to CP&K of providing these stand-alone corporate functions are estimated as approximately £50k annually. It is anticipated that these cost will be reduced over time as a direct result of the shared services savings.
- 2.19 The Office of the Scottish Charity Regulator (OSCR) has confirmed this arrangement satisfies the requirement for CP&K to demonstrate it is a genuine arms-length organisation, on the understanding that CP&K is in agreement that this method of delivery best suits the requirements of the Trust and this would be reviewed over time.

Implementation of new contractual arrangements between the Council and Trusts

- 2.20 Currently the contract for services between the Council and LAL and the Council and HX is negotiated and agreed on an annual basis within the delegated responsibilities falling to the Senior Depute Chief Executive. Implementation of new commissioning and delivery arrangements provided an opportunity to refresh the current contracting process to take account of best practice elsewhere, ensure the service specification set by the Council fully reflects its future strategic priorities for culture and sport, and to ensure Best Value is secured from the contracts.
- 2.21 New strategic priorities for culture and sport 2016-2021 were approved by Lifelong Learning Committee on 27 January 2016 (Report No [16/21](#) refers). These set the broad framework within which commissioning of services takes place over the next 5 years.
- 2.22 Service specifications and contracts are being prepared by the relevant workstream, overseen by the Council's Head of Strategic Commissioning and Organisational Development. External specialist advice was also procured to advise on the most appropriate form of contract for the future ensuring commercial elements were incorporated alongside the Council's Best Value and Following the Public Pound obligations. In December 2015/January 2016 the Council ran a 'soft tender' exercise with LAL and HX for services to be delivered from April 2016 which was reviewed by the Workstream to ensure transparency about operating costs.

- 2.23 The process for CP&K was slightly different as they are a new Trust. PKC issued an outline format and timetable, a number of specification and budget meetings were held with the CP&K Board nominated representative, followed by issue of draft contract by PKC to CP&K to review in line with the defined timelines.
- 2.24 Length of contract was examined as the current 1 year contract renewal cycle is time-consuming for the Council and for Trusts and precludes the opportunity to build in helpful mechanisms like a 'savings pipeline' to be delivered over several years. The recommended contract periods are being considered as part of discussion about agreement of commercial terms and taking into consideration the review which the Council will undertake in 2017/2018 around the future Trust model for culture.
- 2.25 It is anticipated that the contracts will be signed off by all 3 Trust Boards by 1 April 2016. Council approval is via the delegated powers given to the Senior Depute Chief Executive following instruction by Council on 1 July 2015 to implement new commissioning and delivery arrangements for culture and sport.
- 2.26 Education and Children's Services is reviewing the contract monitoring arrangements for all 3 Trusts, ensuring that robust governance arrangements are in place for 1 April 2016 which support the new contractual agreements. Monitoring will be outcomes based focussing on more business critical and fewer key performance indicators.
- 2.27 An Assurance Framework will be put in place for all 3 Trusts whereby they will be required to report to the Strategic Policy and Resources and Lifelong Learning Committees, via the Head of Service, and directly to Scrutiny Committee. This is represented in the flow chart at Appendix 2.

Identification of shared service arrangements across all 3 Trusts

- 2.28 In order to deliver a £160,000 saving on shared services from 1 April 2016 onwards across the 3 Trusts, an options paper is being prepared for consideration by the ECS senior management team. Implementation and development of shared services arrangements will commence in 2016/2017.

Establishment of a new Joint Advisory Group for Sport and Culture

- 2.29 The remit and membership of the new Joint Advisory Group was approved by Lifelong Learning Committee on 27 January 2016 (Report No 16/21 refers). The schedule of meetings and key agenda topics are being prepared with the first meeting of the Group planned for June 2016. The role of the Group is to provide expert advice to the Council (as commissioner of services) and the Trusts (as service providers) on strategic and operational priorities, and to provide the grassroots perspective via community representation on the Group in line with wider community empowerment principles. There is a key relationship between the Advisory Group and the new Local Community Planning Partnerships, which are being established from April 2016 onwards, as important mechanisms for identifying and acting on a wide range of locality

priorities and needs. Similarly there will be a connection between the Group and the Programme Board which will oversee development of major cultural projects including the UK City of Culture 2021 bid to be submitted for Perth.

Implementation Costs

2.30 The non-recurring setup costs for the Trusts are £144k. Provision for this was made in 2015/16 budget £127k, plus a further £17k in 2016/2017. The larger items of expenditure are

Project Manager	£36,000
External Legal and VAT advice	£38,600
To establish Culture Perth and Kinross	£40,000
Expert procurement and commissioning advice	£8,000

3. CONCLUSION AND RECOMMENDATION(S)

3.1 It is recommended that the Council:

- (i) Notes progress to implement new commissioning and delivery arrangements for culture and sport as instructed by the Council on 1 July 2015;
- (ii) Instructs the Head of Finance to sign the pension admission agreement for TUPE employees and new employees of Culture Perth and Kinross, and to underwrite the associated pension liabilities as set out in paragraph 2.7;
- (iii) Approves the implementation of the Assurance Framework for the 3 Trusts, as set out in paragraph 20.27; and
- (iv) Instructs the Senior Depute Chief Executive, ECS (Equality, Community Planning and Public Service Reform) to prepare the scope of a further review of option 5 (report 15/295 refers) by Spring 2017.

Author(s)

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Approved

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John Fyffe	Senior Depute Chief Executive ECS (Equality, Community Planning and Public Service Reform)	15 February 2016

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

The strategic, resource, finance and legal implications resulting from the implementation of this proposal were detailed in report [15/295](#), approved by Council on 1 July 2015.

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	Yes
Corporate Plan	Yes
Resource Implications	
Financial	None
Workforce	None
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	None
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	None
Risk	None
Consultation	
Internal	Yes
External	Yes
Communication	
Communications Plan	No

1. Strategic Implications

Community Plan / Single Outcome Agreement

1.1 This report relates to the delivery of the Perth and Kinross Community Plan / Single Outcome Agreement in terms of the following priorities:

- Developing educated, responsible and informed citizens
- Promoting a prosperous, inclusive and sustainable economy
- Supporting people to lead independent, healthy and active lives
- Creating a safe and sustainable place for future generations

Corporate Plan

1.2 This report relates to the achievement of the Council's Corporate Plan Priorities:

- Developing educated, responsible and informed citizens;
- Promoting a prosperous, inclusive and sustainable economy;
- Supporting people to lead independent, healthy and active lives; and
- Creating a safe and sustainable place for future generations.

2. Resource Implications

Financial

- 2.1 There are financial implications to this report. The implementation costs are identified at paragraph 2.30.

Workforce

- 2.2 There are workforce implications in relation to this report.
- 136 staff in culture and sports roles with direct responsibility for delivering culture and sport services will transfer under TUPE on 1 April 2016.
 - Pension Arrangements:
 - CP&K has an application with Tayside Pension Authorities for admission to the Local Government Pension scheme. Paragraph 2.7 sets out the ongoing responsibilities of PKC in respect of the admission agreement.
 - LAL and HX already have Admitted Body status in respect of the Local Government Pension scheme. .

Asset Management (land, property, IT)

- 2.3 The property management implications to this project are detailed in SP&R report 16/49. There are no other asset implications arising from this report.

3. Assessments

- 3.1 The proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:

- (i) Assessed as **not relevant** for the purposes of EqIA.

Strategic Environmental Assessment

- 3.2 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.

This section should reflect that the proposals have been considered under the Act and no action is required as the Act does not apply to the matters presented in this report. This is because the Committee are requested to note the contents of the report only and the Committee are not being requested to approve, adopt or agree to an action or to set the framework for future decisions.

Sustainability

- 3.3 N/A

Legal and Governance

3.4 There are legal and governance issues arising from this report.

Risk

3.5 The risks arising from this report are:

Risk	Mitigation
There is a risk that Tayside Pensions Trust may decide to apply different assumptions to CP&K from those which are applied to the Council. In that case and depending upon the nature of the assumptions, the admission of the Trust may not remain cost neutral.	To actively monitor the actions of Tayside Pensions Trust and be vigilant to any future risks.

4.

5. Consultation

4.1 Internal

The following have been consulted in the preparation of this report:

- Director (Social Work), Education and Children's' Services*
- Head of Public Service Reform, Culture and Community Development*
- Senior Business and Resources Manager, Education and Children's' Services*
- Head of Strategic Commissioning and Organisational Development*
- Head of Property Services
- Head of Corporate Finance
- Head of Demographic Services
- Chief Accountant
- Head of Legal and Governance Services
- Head of Human Resources
- PKC Communications Team

*Member of SFCS Project Board

Staff consultation

Affected PKC Culture and Sports Services employees have been fully informed throughout the implementation phase of this project. Staff briefings were held on 28 & 29 January 2016 with Culture Services staff and Sport staff have received regular updates at their monthly full staff meetings. Additionally, employees have received updates through FAQs and regular bulletins from the Head of Public Service Reform, Culture and Community Development.

The relevant trade unions have been fully consulted in the implementation of this project and have been invited to and have attended a number of staff briefings.

4.2 External

Engagement with LAL, HX and CP&K Boards and HX and LAL Chief Executive officers has been ongoing throughout the implementation period for this project.

3. **APPENDICES**

- Appendix 1 List of Transferring Properties
- Appendix 2 Assurance Framework

LIST OF TRANSFERING PROPERTIES

Culture Perth and Kinross

Libraries

A K Bell Library
Alyth Library
Auchterarder Library,
Blairgowrie Library
Breadalbane Library
Coupar Angus Library
Comrie Library
Loch Leven Library
North Inch Campus Library
Pitlochry Library
Scone Library
Strathearn Library

Museums and Galleries

Alyth Museum
The Fergusson Gallery
Perth Museum & Art Gallery
Soutar House

Live Active Leisure

Outdoor Education Centres

Blackwater
Kinloch Rannoch

ASSURANCE FRAMEWORK : Arm's Length External Organisations

