

Report To: Council

Date of Meeting: 2nd July 2019

Lead Member / Officer: Cllr Bobby Feely & Cllr Julian Thompson-Hill

Report Author: Graham Boase

Title: Implementation of an Alternative Delivery Model (ADM) for various leisure related activities/functions

1. What is the report about?

The report is about the Articles of Association required to be agreed by Council in readiness for the formation of a not for profit Local Authority Trading Company Limited by Guarantee for the delivery of various leisure related activities and functions.

2. What is the reason for making this report?

To obtain Council's approval of the draft Articles of Association and Member Agreement as set out in the Appendices to this report.

3. What are the Recommendations?

- 3.1 That Council approves the draft Articles of Association and Member Agreement as set out in the Appendices to this report in respect of the not for profit Local Authority Trading Company Limited by Guarantee
- 3.2 That Council authorises the ADM Project Board in consultation with the Lead Member for Well-being and Independence and the Lead Member for Finance, Performance and Strategic Assets to agree the final wording of the documents referred to in 3.1 above.

4. Report details

- 4.1 On 30th May 2019 Council agreed to support the creation of a not for profit Local Authority Trading Company Limited by Guarantee (ADM) as an alternative delivery model for the delivery of various leisure related activities and functions.
- 4.2 This is the type of Company normally incorporated for non-profit making functions, with no share capital and 'members', rather than shareholders. The members undertake to contribute a predetermined nominal sum (eg £10.00) to the liabilities of the company which becomes due in the event of the company being wound up – ie the guarantee.

4.3 The constitutional document of a company limited by guarantee is its Articles of Association registered for public inspection at Companies House (Articles).

The options for the ADM are to:

- Adopt Model Articles prescribed by Companies Act 2006 as its Articles.
- Adopt Articles which are based on the Model Articles with changes specific to the ADM's requirements.
- Exclude the Model Articles in their entirety and create new bespoke Articles.

Local authority companies generally adopt articles based on the Model Articles and amend these articles with specific articles designed to provide the local authority with protections and control in the running of the company. This is the approach that has been adopted in relation to the draft Articles for the ADM which have been drafted by specialist external legal advisers and are contained in Appendix 1 to this report.

4.4 In considering the drafting of the Articles the main consideration has been the achievement of the objectives set out in the business case approved by Cabinet and Council which were to take advantage of the tax benefits of an ADM whilst maintaining as much control as possible for the Council. In order to achieve this the Articles set out clear objects for the ADM on a non-profit distributing basis, and reserve many powers that might otherwise be exercised by the ADM's Board of Directors to the Council.

4.5 In addition to the Articles there will be a Members Agreement between the Council and the ADM which will set out a number of matters that are not included in the Articles.

This will include:

- Reserved matters that cannot be actioned by the ADM without the consent of the Council.
- Obligations on the ADM to provide financial information/notifications to the Council
- Approval by the Council of annual business plan/budgets
- Provision for the role of a Strategic Governance Board/Member Committee to manage the relationship between the Council and the ADM
- The ability of the Council to audit the ADM
- The requirement for the ADM to adopt all of the Council's employment terms, conditions, policies and procedures.

4.6 It is important that these documents are read in conjunction with each other as, together, they provide a complete picture of what the ADM may do and how the council will retain control of it. Although the draft Articles confer several powers on the ADM, the Member Agreement sets out the control measures that the Council will have in place to control the exercise of them.

5. How does the decision contribute to the Corporate Priorities?

5.1 The decision will not impact adversely on the Corporate Priorities, as the ADM will be contracted by the Council to provide the existing services associated with the in scope activities/functions.

6. What will it cost and how will it affect other services?

6.1 There is a one off project cost of circa £200k if the implementation of the ADM is approved. The business case has calculated that a net revenue saving of £800k will be achieved in year 1.

7. What are the main conclusions of the Well-being Impact Assessment (WIA)?

7.1 The WIA was carried out by a multidisciplinary group of officers representing Leisure, HR, Finance, Business Support, Support Services, Community Wellbeing, Corporate Property, Strategic Planning & Performance and Project Management.

7.2 Overall the impact of the project was assessed as neutral, reflecting that at this stage the consideration is about an alternative way of delivering a defined set of activities/functions, it is not about delivering different or alternative activities/functions.

8 What consultations have been carried out with Scrutiny and others?

8.1 External consultation

- Discussion with legal and VAT experts who have provided expertise to the project.
- Other local authorities who have established ADM's for their lessons learnt.
- Welsh Audit Office for advice
- 'Local Partnerships' an external organisation who have provided guidance in respect of the process.
- Rhyl Town Council in respect of their interest within SC2.
- Trade Unions in respect of the impacts on staff.
- Arts Council for Wales in respect of grant funding

8.2 Internal Consultation

- Cabinet Briefing, Cabinet, Council, Members Budget Workshop where the Project has been shared informally, and a Member Workshop specifically about the ADM.
- All MAGs
- Reports to SLT in respect of the Project Brief, and the restructuring of services required should the project be approved.

- Staff briefings which included face to face information sharing with all Managers within FAHS, a written staff briefing to all leisure related staff, and Middle Managers across the Council, face to face staff briefings with all leisure staff, and formal consultation with all staff affected by any restructuring of services.

9. Chief Finance Officer Statement

9.1 There is an opportunity to make significant savings by delivering the facilities highlighted through a different legal structure. As the Council continues to have to manage growing pressures with reducing resources, the creation of a local authority controlled company to operate the facilities and services highlighted, provides the vehicle to generate a level of savings without having to cut services. The report sets out the estimated savings and costs associated with the decision.

9.2 There is an expectation from the Budget Board that a new ADM will continue to contribute to the Council's savings agenda and this will have to be reflected in future business plans. The proposed company model provides a legal structure that allows for commercial growth to be considered, which if successful, may contribute to the savings agenda and help to reduce the level of financial support from the council.

10. What risks are there and is there anything we can do to reduce them?

10.1 There are risks associated with the implementation of the ADM and these are included within the business case. The key risks are:-

- Changes in National Legislation in the future could prevent the anticipated business rate savings from being fully realised.
- The VAT savings cannot be fully achieved through a non for profit LATC model and/or charitable status is required for those to be fully realised, which increases the regulated regime and associated cost.
- There are unforeseen additional one-off or on-going costs with the establishment of the ADM not have not been taken into account at the implementation stage.
- The ADM is not as financially successful as hoped and any resultant additional costs fall back on the Council to fund and/or the Company is unable to make the adequate reinvestment into its day to day business activities due to lack of funds.

11. Power to make the Decision

s2 Local Government Act 2000

s95 Local Government Act 2003

Local Government (Best Value Authorities)(Power to Trade)(Wales) Order 2006