



Cabinet

Date:	Thursday, 29 March 2012
Time:	5.30 pm
Venue:	Committee Room 1 - Wallasey Town Hall

Contact Officer: Mark Delap
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SUPPLEMENTARY AGENDA 2

11. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR (PART 1)

To consider any other business that the Chair accepts as being urgent.

- 11.1 Any Other Urgent Business Approved by the Chair (Part 1)
- COMPROMISE CONTRACTS
(Pages 1 - 12)**
- 11.2 Any Other Urgent Business Approved by the Chair (Part 1)
- PACIFIC ROAD ARTS CENTRE, MUSEUM AND
TRAMWAY - OUTCOME OF TENDER EXERCISE
(Pages 13 - 22)**

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WIRRAL COUNCIL

CABINET

29 MARCH 2012

SUBJECT:	COMPROMISE CONTRACTS
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF LAW HR AND ASSET MANAGEMENT
RESPONSIBLE PORTFOLIO HOLDER:	CLLR TOM HARNEY
KEY DECISION?	NO

1.0 EXECUTIVE SUMMARY

1.1 The purpose of this report is to advise Cabinet about the purpose of compromise contracts, their use by the Council in different situations and sets out the options for their future use.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 On 13 February 2012 Council passed a motion that that all future “compromise deals”, that include an element of financial or other incentive are subject to a full democratically accountable process. Council asked that The Employment and Appointments Committee are tasked with forming a Sub-Committee to assess and sign off any compromise deals before any such offer is made to employees, and the process and scope of reporting to be agreed by this Sub-Committee. Members for this Sub-Committee are to be co-opted from the list of Members available for the Appeals Sub-Committee with a proportionality of 1:1:1. The Chair for any such meeting can be decided by the agreement of the Sub-Committee.
- 2.2 Council also asked that all such “compromise deals”, once agreed by the Sub-Committee, are reported to the next meeting of The Employment and Appointments Committee, under exempt items if the details are of a sensitive nature.
- 2.3 A Compromise Contract (or agreement) is a statutory device authorised under s203 of The Employment Rights Act (1996) and Section 147 of The Equality Act 2010. It is one of only two mechanisms by which an employee can waive his/her statutory employment related claims. The other requires the involvement of ACAS using a COT 3 form (see Para 4.5).
- 2.4 The object of a compromise contract is to settle some or all of the claims rising out of the employment relationship or its termination.
- 2.5 It is a mutually agreed document and usually provides for a payment by the employer, in return for which the employee agrees not to pursue any claim they may have to an employment tribunal.
- 2.6 The most commonly included clauses within a compromise contract usually fall under the following headings:

- Definition of terms
- Termination of employment
- Accrued salary and benefits
- Confidentiality
- Return/retention of company property
- Restrictive covenants
- Legal fees
- Full and final settlement

2.7 A compromise contract is valid only if it satisfies the following conditions;

- It is in writing.
- It relates to 'particular complaints' or 'particular proceedings'.
- The employee has received advice on the terms and effect of the contract from a relevant independent adviser (usually a solicitor), who is identified in the contract.
- There is a contract of insurance covering the risk of the employee bringing a claim against the adviser in respect of their advice.
- The contract states that the conditions regulating compromise contracts under the relevant legislation are satisfied.

2.8 A compromise contract ensures that any specified employment related claims are settled. Any complaints outside of employment such as Whistleblowing concerns are not covered by such an agreement, unless the employee claims that he/she has been victimised because she/he raised such concerns and is willing to settle his/her claim, whilst raising concerns with the appropriate authority.

2.9 Compromise contracts are not the only instance where an employee can waive their statutory employment rights. There is also an ACAS conciliated settlement otherwise known as a "COT3". This contract is valid and binding in the same way as a compromise agreement.

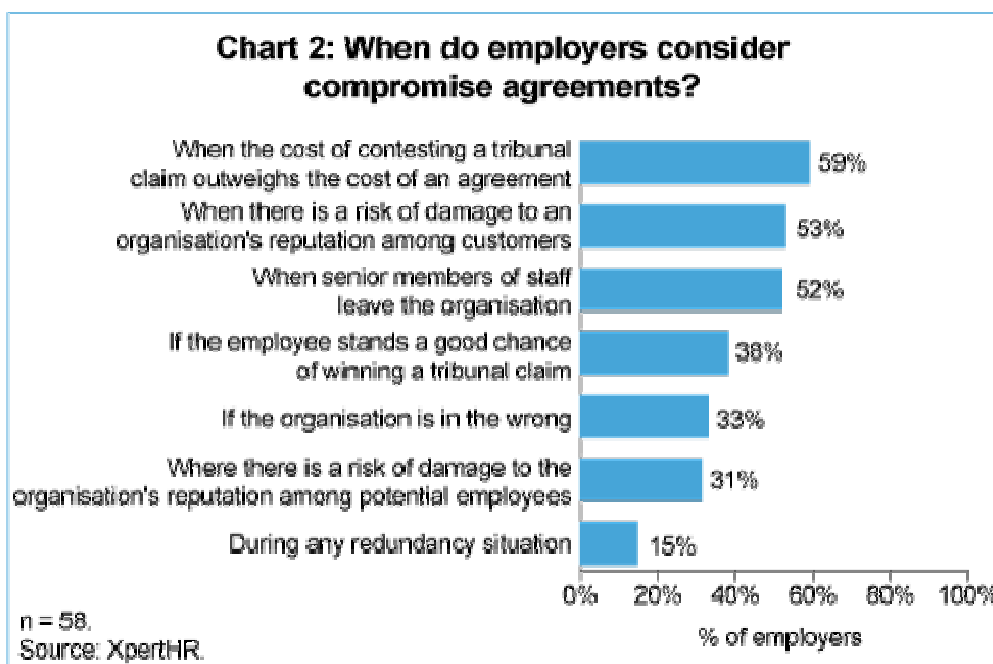
2.10 A COT3 contract is used where employment tribunal proceedings have commenced or are likely to commence and an ACAS conciliator is involved in helping parties involved reach a settlement. A COT3 contract does not necessarily include the provision that an employee's employment is to be terminated. It may relate simply to settlement of an employment claim in exchange for a financial sum.

2.11 A discussion with an employee about the compromise contract should be on a 'without prejudice' basis with a view to reaching a settlement. The understanding is that such discussions cannot be relied on in a later court or employment tribunal claim. This is because such discussions are 'privileged' so can't be used in a court or tribunal or even referred to. The privilege is given to such discussions by the courts so as to allow parties to negotiate openly without fearing that the discussions will be used against them if the negotiations fail.

2.12 For the "without prejudice" rule to apply there must be a dispute between the parties and the written or oral communications and the purpose of the without prejudice discussion must be a genuine attempt to compromise it.

3. USE OF COMPROMISE AGREEMENTS

- 3.1 In a 2010 survey for XpertHR, one-third (33%) of respondents stated that the use of compromise contracts has increased over the past few years at their organisation, 44% say there has been no change, and 16% say the frequency of their use has decreased.
- 3.2 A Chartered Institute of Personnel and Development (CIPD) Survey in 2011 found that seven out of ten employers (70%) use compromise contracts to avoid the risk of tribunal claims, with more than half (52%) saying that their use of compromise contracts has increased in the last two years.
- 3.3 Six in 10 (59%) respondents told XpertHR that they consider using a contract when the cost of contesting an employment tribunal claim outweighs the cost of an agreement, and a similar number (53%) do so when there is a risk of damage to the organisation's reputation among customers. Half the organisations (52%) consider using them when senior members of staff leave the organisation. One in six (15%) organisations routinely uses compromise contracts in redundancy situations. This is set out in the chart below:



- 3.4 The CIPD survey also found that major reasons for using the compromise contract (other than to settle an existing claim) are to remove an employee on the grounds of poor performance or misconduct (38.95), to avoid legal challenge in redundancy situations (25.75) and to make it easier to remove senior staff (24.3%).

4. THE COUNCIL'S USE OF COMPROMISE CONTRACTS

- 4.1 The Council enters into compromise contracts in the following circumstances.

a) Settlement of claims that have been lodged with an Employment Tribunal. This includes multi-equal pay claims, unfair dismissal and discrimination claims. It also includes potential claims not yet lodged.

- 4.2 In these circumstances, claims may be settled at any stage of the process right up to the day that proceedings are due to commence. This process often involves ACAS.
- 4.3 In determining whether to settle claims, the council's Legal and HR representatives, with counsel advice as appropriate, would consider the merits of the employee's claim, the financial and reputation risks to the council of defending and/or losing the case and whether settling a case for a smaller sum before other side potentially wins a case (if that is a risk), is in the economic interests of the council.
- 4.4 The employment tribunal process also now includes a Judicial Mediation scheme. Judicial Mediation involves bringing the parties together for a Mediation Case Management Discussion before a trained Employment Judge who remains neutral and tries to assist the parties in resolving their disputes. Over 65% of cases mediated reach a successful settlement on the day of mediation.
- 4.5 The judicial mediation process requires that representatives for both parties have appropriate 'authority' to make decisions in relation to any potential proposals reached on the day in settlement of the claims. This could include termination of employment if that is presented and agreed.

b) To bring an employment relationship to an end through mutual agreement.

- 4.6 The Council has entered into a small number of compromise contracts with employees where it has been considered to be in the interests of the Council and the employee for their employment to be terminated.
- 4.7 The Council has also used compromise contracts for all leavers under VS/EVR over the past couple of years. This mitigated any risks to the organisation arising from the VS/EVR process. A simplified version of the standard compromise contract was used, This did not include any provisions in relation to confidentiality.

5.0 RELEVANT RISKS

- 5.1 There are potential financial risks to the Council if the Council does not have a workable arrangement to allow decisions to be made quickly to offer or agree to settle claims and, by doing so enter into compromise contracts in response to Employment Tribunal proceedings.

4.0 OTHER OPTIONS CONSIDERED

- 4.1 The current arrangements under the Scheme of Delegation of Functions to Officers, (Part 3, Schedule 4, Page 111. Para 28), continues to allow Chief Officers to appoint, dismiss or transfer staff, or take any other action with regard to the employment of staff in accordance with the Employment Procedure rules. This includes authorisation to settle claims or potential claims against the Council at Employment Tribunal where it is in the interests of the Council to do so and which may involve use of a

compromise contract (or COT3). The Head of Legal Services has delegated powers to settle legal proceedings against the council (Para (40), Page 118).

4.2 In changing the current arrangements there are a number of options:

a) Adopt a process whereby any proposed termination of employment of officers **above SCP49** via compromise contract and which includes a payment or financial incentive as part of the termination arrangement must be pre-authorised by a sub-committee of The Employment and Appointments Committee.

b) Adopt a process whereby proposed termination of employment of any **Heads of Service/Chief Officers** via compromise contract and which includes a payment, or financial incentive as part of the termination arrangement must be pre-authorised by a sub-committee of The Employment and Appointments Committee.

c) Adopt a process whereby any termination of employment of any employees or officers via compromise contract and which includes a payment or financial incentive as part of the termination arrangement over **£50k** must be pre-authorised by a sub-committee of The Employment and Appointments Committee.

d) Adopt a process that any proposed termination of employment of **any employees** via compromise contract and which includes a payment or financial incentive as part of the termination arrangement must be pre-authorised by a sub-committee of The Employment and Appointments Committee.

4.3 The above procedures cannot apply to staff employed at Council maintained schools, where the governing body has the power to agree terms for the termination of such staff.

5.0 CONSULTATION

5.1 No consultation undertaken.

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

6.1 No implications

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

7.1 No implications

8.0 LEGAL IMPLICATIONS

8.1 Legal implications are set out within main body of the report.

9.0 EQUALITIES IMPLICATIONS

9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(b) No because there is no relevance to equality.

10.0 CARBON REDUCTION IMPLICATIONS

10.1 No implications

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 No implications

12.0 RECOMMENDATION/S

In view of the motion passed by the Council and, subject to endorsement by the Improvement Board –

12.1 The recommendation is to adopt a process whereby any proposed termination of employment of officers above SCP49 via compromise contract, which includes a payment or financial incentive as part of the termination arrangement, or where a payment or financial incentive as part of the termination arrangement is over £50k.

12.2 That a report is taken to The Employment and Appointments Committee to agree appropriate arrangements for authorisation which will allow such decisions to be taken in a timely manner.

13.0 REASON/S FOR RECOMMENDATION/S

13.1 To ensure that there is a clear understanding of circumstances in which it may be appropriate for the Council to enter into a compromise contract with an employee and that the appropriate authority is granted to do so.

13.2 To retain the authority and flexibility to enter into a compromise contract to settle claims and potential claims against the Council in an employment tribunal speedily and to the Council's potential advantage.

3.5 The introduction of a reporting for all compromise contracts, including termination of employment, would enable the Elected Members to have access to information, question the rationale for decisions and have the information to assess the review the effectiveness of the terms of reference of the sub-committee.

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APPENDICES

None

REFERENCE MATERIAL

There is no reference material.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Council	13 February 2012

Equality Impact Toolkit (new version February 2012)

Section 1: Your details

Council officer:

Email address:

Head of Service:

Chief Officer:

Department:

Date:

Section 2: What Council function / proposal is being assessed?**Section 2b: Is this EIA being submitted to Cabinet or Overview & Scrutiny Committee?**

Yes / No

If 'yes' please state which meeting and what date

.....

And please add hyperlink to your published EIA on the Council's website

.....

Section 3: Will the Council function / proposal affect equality in? (please tick relevant boxes)

- Services**
- The workforce**
- Communities**
- Other** (please state)

If you have ticked one or more of above, please go to section 4.

- None** (please stop here and email this form to your Chief Officer who needs to email it to equalitywatch@wirral.gov.uk for publishing)

Section 4: Within the Equality Duty 2010, there are 3 legal requirements. Will the Council function / proposal support the way the Council(please tick relevant boxes)

- Eliminates unlawful discrimination, harassment and victimisation
- Advances equality of opportunity
- Fosters good relations between groups of people

If you have ticked one or more of above, please go to section 5.

- None** (please stop here and email this form to your Chief Officer who needs to email it to equalitywatch@wirral.gov.uk for publishing)

Section 5: Will the function / proposal have a positive or negative impact on any of the protected groups (race, gender, disability, gender reassignment, age, pregnancy and maternity, religion and belief, sexual orientation, marriage and civil partnership)?

You may also want to consider socio-economic status of individuals.

Please list in the table below and include actions required to mitigate any negative impact.

Protected characteristic	Positive or negative impact	Action required to mitigate any negative impact	Lead person	Timescale	Resource implications

Section 5a: Where and how will the above actions be monitored?

Section 5b: If you think there is no negative impact, what is your reasoning behind this?

Section 6: What research / data / information have you used in support of this process?

Section 7: Are you intending to carry out any consultation with regard to this Council function / policy?

Yes / No – (please delete as appropriate)

If 'yes' please continue to section 8.

If 'no' please state your reason(s) why:

(please stop here and email this form to your Chief Officer who needs to email it to equalitywatch@wirral.gov.uk for publishing)

Section 8: How will consultation take place?

Before you complete your consultation, please email your 'incomplete' EIA to equalitywatch@wirral.gov.uk via your Chief Officer in order for the Council to ensure it is meeting it's legal requirements. The EIA will be published with a note saying we are awaiting outcomes from a consultation exercise.

Once you have completed your consultation, please review your actions in section 5. Then email this form to your Chief Officer who needs to email it to equalitywatch@wirral.gov.uk for re-publishing.

Section 9: Have you remembered to:

- a) Add a hyperlink to your published EIA on the Council website? (section 2b)
- b) Include any positive impacts as well as negative impacts? (section 5)
- c) Send this EIA to equalitywatch@wirral.gov.uk via your Chief Officer?
- d) Review section 5 once consultation has taken place and sent your completed EIA to equalitywatch@wirral.gov.uk via your Chief Officer for re-publishing?

Before you finalise this report, please delete section 9

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WIRRAL COUNCIL

CABINET

29 MARCH 2012

SUBJECT:	<i>PACIFIC ROAD ARTS CENTRE, TRANSPORT MUSEUM AND TRAMWAY, BIRKENHEAD – OUTCOME OF TENDER EXERCISE</i>
WARD AFFECTED:	<i>BIRKENHEAD</i>
REPORT OF:	<i>DIRECTOR OF LAW, HR AND ASSET MANAGEMENT</i>
RESPONSIBLE PORTFOLIO HOLDER:	<i>COUNCILLOR TOM HARNEY</i>
KEY DECISION?	YES

1.0 EXECUTIVE SUMMARY

1.1 This report explains the outcome of a marketing exercise for Pacific Road Arts Centre, the Transport Museum and Tramway in Birkenhead. No compliant bids were received for the facilities, although expressions of interest were submitted to the Council by different parties. The report recommends a way forward.

2.0 BACKGROUND AND KEY ISSUES

Background

2.1 At its meeting on 22 September 2011 Cabinet considered a report on the outcome of an unsuccessful disposal process for these assets. That report identified changes in circumstances since the start of the process and commented upon particular issues relating to the various assets.

2.2 The report recommended that a further marketing exercise be undertaken on the following basis:

- Competitive bids should be sought to dispose of the Council's interests
- The Pacific Road facility should not be disposed of separately from the tramway operation
- Continued operation of the theatre should not be a requirement for the future
- The opportunity to use the Pacific Road building to improve the display of museum contents and the operation of the tramway and to strengthen the visitor attraction should be considered by bidders, together with other appropriate uses.
- Bidders should be required to show how they will engage with and include community and voluntary groups in future operations.

- A requirement should be included in any disposal for the new operator to provide secure and satisfactory arrangements for the housing and management of the museum collection.

As with the previous exercise it was recommended that proposals be formally evaluated, taking account of the above principles and other factors including:

- Future development proposals and their regeneration impacts
- Synergies with other businesses and activities in the area
- Financial viability and availability of resources
- Staffing and HR arrangements
- Any financial offer made.

2.3 Cabinet instructed the Director of Law, HR and Asset Management to remarket Pacific Road Arts Centre, the Transport Museum and Tramway on this basis and to report the outcome to a future Cabinet meeting.

2.4 The properties were marketed using the electronic tendering portal of 'The Chest'. The opportunity was nationally and locally advertised, and those parties who had previously expressed interest were advised of the new marketing exercise. A considerable amount of preparatory work was carried out before the properties were re-marketed, and as a result a comprehensive set of legal and other documentation was made available to prospective bidders. Marketing was on the basis that a successful bidder would be expected to very quickly complete the legal documentation following acceptance of their bid, subject only to obtaining any necessary consent from the Secretary of State in relation to the operation of the tramway.

Present position

2.5 The marketing exercise closed on 3 February 2012 and no compliant bids were received.

2.6 This is the second unsuccessful attempt to dispose of these properties, and it must be concluded that there is currently no party willing and ready to take over and operate all three assets on the basis specified by the Council.

2.7 The Pacific Road Arts Centre is now effectively 'mothballed' with no further programming of performances. There is one remaining commercial tenant in the building, whose accommodation can be reached from its own separate entrance without the need to pass through the remainder of the building. As part of the restructure of the service some of the programmes from Pacific Road are being transferred to the Floral Pavilion and lighting and sound equipment is being transferred to the Floral Pavilion to accommodate this. The operational costs of these performances are significantly reduced by utilising the Floral's existing infrastructure for front of house and technical support. Pacific Road could be reopened as a performance venue if a suitable operator was identified. The Transport Museum and Tramway continue to operate.

2.8 The Council has previously committed itself to dispose of these operations and the properties, and there remains a requirement to achieve a budget saving of £250k from doing so. Provision in this amount was made as a one year policy option for 2011/12

to allow continued operation whilst a permanent solution was developed, but no such provision has been made for 2012/13.

- 2.9 An ePetition has been submitted to the Council and is covered in more detail in Section 5 of the report.

Interest in the premises

- 2.10 Although no compliant bids were received as a result of the marketing exercise the following interest has been expressed in the premises:

Merseytravel

- 2.11 Merseytravel submitted a letter dated 1 February 2012 through The Chest. This explained that whilst the Integrated Transport Authority had given in-principle support to a bid this was subject to a more rigorous assessment of the business case by an external firm of accountants. As such it would not be in a position to submit a bid by 3 February 2012.

BEST Consortium

- 2.12 The Consortium submitted an email on 25 January 2012 in which it registered concerns at the tender process and the conditions attached to the tender, and explained that it would not submit a formal tender. It made clear however its continued interest in these assets and its wish to enter into discussions with the Council. The Consortium resubmitted with that email its previous proposal from 2009.

Others

- 2.13 Outside the tender process there is continuing external interest in the future use of Pacific Road, and 3 separate organisations have sent brief emails expressing interest in operating the Pacific Road Arts Centre alone.

The way forward

- 2.14 The first step in considering the way forward is to confirm that the Council still wants to dispose of the operations and the assets and achieve the annual revenue savings from doing so, as previously agreed. It is important to understand that there is a different process for disposing of operations on a going concern basis and closing the operations and then selling the buildings. Both processes must be conducted within contract procedure rules and are governed by general principles of fairness and transparency. However, a disposal with a requirement that a bidder runs the facility is radically different from a disposal of the buildings in the open market place.
- 2.15 It is assumed that the Council still want to achieve revenue savings, and on that basis it is recommended that the following actions are taken and further information is gathered to enable a final decision to be taken on the most appropriate way to dispose of the operations and/or the buildings. Savings will be achieved from a combination of the current costs of running the buildings and the costs of delivering services (which include staffing costs).

- 2.16 The separate expressions of interest which the Council has received are different in nature, and further discussions will be held with each of the parties that has expressed interest. The purpose of such discussions would be to clarify why it was they were not able to bid and on what basis each of them would be willing to acquire one or all of the assets or operations from the Council and the resulting savings that would be delivered. Each of the parties would be advised that discussions would be exploratory and would not carry any commitment from the Council to proceed with a disposal to them or anyone.
- 2.17 Detailed examination will be undertaken of the feasibility, technical issues and estimated costs in closing and decommissioning the Tramway, and in separating the Tramway infrastructure from the Pacific Road building. This will enable informed decisions to be made on the separate treatment of each of the individual assets.
- 2.18 An evaluation will be undertaken of potential alternative uses for the buildings at Taylor Street and Pacific Road, on the assumption that they will be vacated and surplus to the Council's requirements. That evaluation would include an assessment of their potential for sale on the open market, and their potential to contribute to the wider regeneration of the area.
- 2.19 An evaluation will be undertaken of the steps to be taken and issues to be addressed in disposing of the museum collection or accommodating all or part of it elsewhere, together with practical and legal issues that this will entail. An action plan would be developed as part of this evaluation.
- 2.20 Discussions will be held with the volunteers currently active in the operation of the Transport Museum and Tramway to assess their interest in a potential community asset transfer of the facilities and their capacity to complete such a transfer and assume full responsibility for the risks and liabilities arising from continued operation. The position of the museum collection would be addressed in those discussions, recognising that the Council has a trustee responsibility in respect of those assets that it holds.
- 2.21 Having regard to the Council's financial situation and the requirement to dispose of these assets and deliver savings it is recommended that a period of three months be allowed for this work, at the end of which a further report will be submitted to Cabinet to allow a final decision to be made on the preferred option for disposal.

3.0 RELEVANT RISKS

- 3.1 External grants were used in the development of the Pacific Road Centre and the Transport Museum and Tramway, and there is a risk that vacation and disposal of the assets may trigger claw back. As officers now involved could not locate full copies of the grant agreements nor could the grant giving bodies supply them it has not been possible to assess this risk comprehensively.

4.0 OTHER OPTIONS CONSIDERED

Immediate closure/mothballing of the transport museum/tramway.

- 4.1 The option is available to take immediate steps to cease operating the Tramway and close the Transport Museum. This option is not recommended pending the outcome

of the further work recommended in Section 2 of the report and, in particular, the discussions to be held with volunteers.

- 4.2 It is however noted that provision for visiting members of the public at the museum is poor by modern standards and the extensive collection in the Council's possession - much of which is on loan - needs to be better displayed. There is a need to invest in the site if it is to remain in operation, and the estimated cost of such investment will be included in the further report to members.
- 4.3 Permanent closure of the Tramway would require de-commissioning of tracks and overhead wires used for its operation, or if mothballed, for them to be made safe and maintained.
- 4.4 Closure of the Transport Museum would require consideration of how to display, store, or return those items which are either on loan or, are owned by the Authority.
- 4.5 The Council would continue to incur costs on the retention and maintenance of the mothballed facilities.

Continued use of all facilities

- 4.6 This option has not been considered in detail on the basis that the Council still intends to dispose of the assets and maximise annual revenue savings from doing so.

Separate disposal of Pacific Road

- 4.7 Before this option could be considered in detail the further work identified at 2.17 and 2.18 above is required.

5.0 CONSULTATION

- 5.1 There is a strong volunteering/community interest element attached to the transport museum, with over 100 active volunteers/interested community members. Volunteers and interested groups were made aware of the recent marketing exercise, but it is proposed to undertake more detailed consultation with them.
- 5.2 Members are advised that an ePetition has been active on the Council's website regarding Pacific Road. The petition was in the following terms:

"We the undersigned petition the Council to retain Pacific Road Arts Centre as a community asset. We believe that the centre was established for the benefit of the people of Birkenhead and the wider Wirral area using EU objective one funds and on this basis it should be a mandatory condition of the tender process for the Wirral Transport Museum and Tramway that the Arts Centre is retained. We call upon the Council and its officers to make this a priority in deciding on any successful bid.

Justification: There is wide support for Pacific Road being maintained as an Arts and music venue including a Facebook group with 1100 members and a number of high profile supporters."

- 5.3 The petition closed at midnight on 16 February 2012, 122 petitioners agreed with the petition and none disagreed. The following response has been posted:

“Cabinet agreed at their meeting on 22 September 2011 to re-market Pacific Road, the Transport Museum and Tramway without a requirement for the continued operation of the Theatre. That process is now complete and will be reported to Cabinet setting out options for the future of these assets.

The ePetition will be included in the report for members’ consideration.”

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 6.1 Voluntary groups may be interested in taking a larger role in the running of the Tramway and Transport Museum but without a transfer to a properly constituted organisation legally able to run the Tramway the main liability would remain with the Council. Members should also note the position outlined in section 7 in respect of pensions for employees who would be affected by any decision to transfer. It is unlikely that a community group could shoulder the relevant costs associated with staffing.
- 6.2 These interested groups operate with Council support, and whilst attempts could be made to work with them to develop an asset transfer approach this would take a considerable amount of time and resources. It is considered unlikely at this stage that the groups could operate the facility in the future without continuing Council involvement and support, although it must be stressed that no discussions have taken place with volunteers on this issue.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

FINANCIAL IMPLICATIONS

- 7.1 There are immediate repairs outstanding at Pacific Road estimated at £1,500 and at Taylor Street of £4,000. Estimated life cycle repair costs are approximately £87,000 for Pacific Road and £113,000 for Taylor Street.
- 7.2 The cost of running the Tramway and Transport Museum is around £170,000 per annum.
- 7.3 The Council Budget 2011/12 includes a £250,000 saving from the disposal of Pacific Road. This is presently held with the Law, HR and Asset Management Budget although the facility remains under the management of the Director of Technical Services. The Director of Finance has reviewed the budget saving requirement and the present position. The saving reflected the budget for Pacific Road of £250,000 which comprised of employees £360,000 and running costs of £70,000 less the net income from events of £180,000.
- 7.4 It is recommended that this saving be transferred to Technical Services as the budget for Pacific Road remains within that Department and that the Director provides an update on the delivery of these savings.
- 7.5 Employee budgets of £360,000 have transferred, or will transfer, from Pacific Road to the Floral Pavilion. Together with the non-achievement of net income of £180,000 at

Pacific Road and the fact that there are £70,000 of premises-related costs to 'mothball' the facility, these actions mean that there is a growth requirement of £610,000 to be requested by the Director from closing Pacific Road. When the facility is disposed of there will be a £70,000 saving in premises related costs.

IT IMPLICATIONS

7.6 None

STAFFING IMPLICATIONS

7.7 Staff associated with Pacific Road Arts Centre are now incorporated within joint staffing arrangements with the Floral Pavilion. They would be dealt with in any disposal in accordance with Council HR policies.

7.8 Outsourcing the running of the tram and/or the museum will involve employee considerations. There are 3 staff associated with the tramway and transport museum who would transfer under TUPE to a new operator if the transport museum and tramway operations were taken over by another party. Any bidder would for example either have to join the Local Government Pension Scheme as an admitted body or provide a broadly comparable scheme. If those operations ceased without transfer the staff would be dealt with in accordance with the Council's HR policies.

ASSET IMPLICATIONS

7.9 These are contained in the body of the report. The Council has no current requirement for alternative use of these assets should the existing operations cease.

8.0 LEGAL IMPLICATIONS

8.1 The Council must comply with the overall principles of equal treatment, transparency and proportionality even if the service operations themselves lie outside the strict requirements of the EU procurement rules. It was these principles that obliged the Council to provide all relevant documents it had supplied in the course of previous negotiations (save the contracts that were negotiated then) to all prospective bidders.

8.2 The museums service does not have to be disposed of itself through the complex EU process as it is a Part B leisure service nor the light rail heritage system but nevertheless the Council must still act within contract procedure rules and in accordance with the overall principles stated which will require some kind of request for bids.

8.3 Now that the bid process has closed the Council it is free to discuss with those parties that expressed an interest but did not bid what effectively dissuaded them from bidding. Any discussions with bidders will need to be on a generic level in case that should prejudice any future exercise but provided each bidder is questioned within a consistent framework then the Council will be acting in line with the principles set out above.

8.4 Any future bid exercise could then be informed by the discussions that have taken place

9.0 EQUALITIES IMPLICATIONS

9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no relevance to equality.

10.0 CARBON REDUCTION IMPLICATIONS

10.1 Disposal of Pacific Road Arts Centre, the Transport Museum and Tramway will reduce CO2 emissions from the Council's activities. These savings will contribute to the Council's Carbon Budget.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 Pacific Road Arts Centre and Taylor Street Transport Museum are shown as falling within Primarily Industrial Areas on the Council's Unitary Development Plan for Wirral adopted in February 2000.

11.2 The tramway is covered by Policy TR5/3 in the Unitary Development Plan, which identifies the extension of the route to Conway Park for implementation as a major highway scheme. The development of Wirral Waters offers a strategic opportunity for light rail, and the existing tramway could form the nucleus of such a scheme.

12.0 RECOMMENDATIONS

That:

12.1 The outcome of the recent tender exercise for the disposal of Pacific Road Arts Centre, the Transport Museum and Tramway be noted and the process be considered to have concluded.

12.2 The intention to dispose of these operations and assets be confirmed.

12.3 The Director of Law, HR and Asset Management be instructed to undertake further work as outlined in the report and to report to a future meeting of Cabinet on the recommended way forward. Subject to endorsement by the Improvement Board.

13.0 REASONS FOR RECOMMENDATIONS

13.1 To advise members of the outcome of the recent tender exercise.

13.2 To provide a basis for further action to dispose of the operations and assets.

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APPENDICES

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	23 July 2009
Cabinet	9 December 2009
Cabinet	22 July 2010
Cabinet	22 September 2011

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