

WIRRAL COUNCIL

CABINET – 22 JULY 2010

REPORT OF THE DIRECTOR OF LAW, HR AND ASSET MANAGEMENT

PACIFIC ROAD ARTS THEATRE, TAYLOR STREET MUSEUM & WIRRAL TRAMWAY, BIRKENHEAD

1. EXECUTIVE SUMMARY

1.1 The purpose of this report is to update Cabinet on negotiations for the transfer of Pacific Road Arts Theatre, Taylor Street Museum and Wirral Tramway, Birkenhead and to seek authority for the way forward.

2. BACKGROUND

2.1 At its meeting on 9th January 2009 Cabinet resolved, inter alia; -

- i) That expressions of interest in Pacific Road Theatre by Community/Charitable Trust/Commercial Operator or other interest organisation be sought, or, given the considerable interest already expressed, be considered as part of a bidding process, to run the facility as an independent arts and performance venue.
- ii) That the Wirral Transport Museum be transferred to a Community Development Trust, given suitable terms and conditions, or if interest is expressed by an operator in the whole Pacific Road/Tramshed site, that the specialist role of the Transport Museum be protected as far as possible.

2.2 In accordance with the above resolution, the properties were marketed and a substantial number of parties were issued with a Pre Qualification Questionnaire (PQQ) to register their initial interest. The PQQ's were assessed and scored and the results reported to Cabinet. On 23 July 2009, it was resolved:-

(1) That the expressions of interest in the future operation of Pacific Road Arts Centre and the Wirral Transport Museum and Tramway be noted.

(2) That the parties submitting the top three scoring submissions be invited to proceed to the second stage.

(3) That the principles outlined in paragraph 6.3 of the report now submitted be approved as the basis for formulation and evaluation of bids.

(The principles referred to in 6.3 above are set out below:-

- 1. Preference will be given to proposals that offer the Council an integrated solution to the disposal and continued operation of both facilities and the tramway; and

2. Preference will be given to proposals that demonstrate an inclusive approach to working with other interested parties; and
3. The Council will not relocate existing uses or occupiers, and will require bidders to demonstrate how any relocations arising from their proposals would be arranged and funded in full; and
4. The Council will not make any financial contribution to the relocation of users/occupiers of the facilities.)

2.3 On 9th December 2009, Cabinet resolved:-

That Merseytravel be nominated as the preferred bidder and that the Director of Law, HR and Asset Management be authorised to negotiate and conclude any necessary legal documentation.

3. PRESENT POSITION

- 3.1 Following on from the above resolution, detailed negotiations commenced with Merseytravel, with an initial target date of 1st April being agreed between the parties. The arrangements are necessarily complex, involving TUPE transfers, transfers of licences, website addresses, data protection, leases of the separate premises, arrangements for ongoing use of the premises by the Youth Theatre and, not least, transfer of the Statutory Powers to operate the tramway.
- 3.2 It is the latter point that has proved most difficult. Whereas from the Council's perspective the tramway was seen as having something of a lesser role, it is more central to Merseytravel's ambitions. Rather than a relatively simple operating licence/lease, as was arranged with Blackpool Transport Services in the tramway's earlier years, Merseytravel through their solicitors, have adopted a "root and branch" examination of the undertaking, its regulatory approvals, land title, construction details, etc.
- 3.3 There have been a number of different parties involved in the three phases of the tramway's construction. Some matters of detail may have been overlooked, or lost, as parties have changed, e.g. the cessation of the Hamilton Partnership, the abolition of the Merseyside Development Corporation, the cessation of Blackpool Transport Services as operator and the use of consultants for various different aspects. On the Council's side, many of the staff involved in developing the scheme have moved on, so much personal knowledge of its history has been lost.
- 3.4 The net result is that it has not been possible to produce documentary evidence to the degree of detail required by Merseytravel's solicitors. This is not a hindrance to the day-to-day operation of the tramway, which has functioned as a heritage operation for a number of years, safely and without challenge.
- 3.5 Nevertheless, whereas the Council has been concerned with a low key operation, Merseytravel's solicitors are applying more rigorous tests appropriate to a daily transport facility. Consequently, the position now

appears to be that Merseytravel is concerned that its ambitions for the line as outlined in its bid, being somewhat greater than its existing level of operation, could give rise to some unspecified challenge to its operation in the future.

3.6 Accordingly, Merseytravel is seeking indemnities from the Council that cover four specific areas.

1. Operations before transfer to Merseytravel.
2. For a period of 10 years, failure to have necessary consents or approvals for operation.
3. For a period of 10 years for claims in respect of trespass or nuisance.
4. For a period of 10 years for interference with tramway operations because of defects in the Council's title to the tramway or its right to operate the tramway on land that is not owned by the Council.

3.7 Merseytravel is seeking an indemnity as set out in the Exempt Appendix.

4. Financial implications

4.1 There is an ongoing revenue loss attributable to the premises whilst the Council retains the assets. The estimated net savings identified in the SAR are as follows:-

£200,000 p.a. in respect of Pacific Road
£134,000 p.a in respect of Taylor Street Transport Museum (including the tramway)

There are immediate repairs outstanding at Pacific Road estimated at £1,500 and at Taylor Street of £4,000. The projected 10 year costs are approximately £87,000 for Pacific Road and £113,000 for Taylor Street.

The savings in respect of Pacific Road were qualified as possibly not immediately realisable due to existing contractual commitments.

4.2 The degree of exposure of the Council through the indemnities sought is hard to quantify, as to a large extent it is not known exactly what problems could arise. (See Exempt Appendix for explanation of the risk factors.) The Director of Finance is investigating the possibility of insurance and progress will be reported verbally to Cabinet.

5. Staffing implications

5.1 The transfer to Merseytravel involves the TUPE transfer of nine staff from Cultural Services Division.

6. Equal Opportunities implications

6.1 There are no particular equal opportunity implications, in that the facilities will remain available to all.

7. Community Safety implications

7.1 There are no particular Community Safety implications arising from the transfer.

8. Local Agenda 21 implications

8.1 There are potentially significant Local Agenda 21 implications. The tramway was always seen as a way of linking various tourist and cultural attractions in central Birkenhead. Merseytravel proposes to build on that foundation.

9. Planning implications

9.1 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.

10. Anti-poverty implications

10.1 There are no specific anti-poverty implications.

11. Human Rights implications

11.1 There are no human rights implications.

12. Social Inclusion implications

12.1 There are no significant social inclusion implications in the case of the tramway in its existing form.

13. Local Member Support implications

13.1 The assets are in Birkenhead and Tranmere Ward.

14. Background Papers

14.1 Previous Cabinet Reports dated 9th January, 23rd July 9th December, 2009.

15. Asset Management Implications

15.1 The relevant assets were identified for asset transfer or disposal under the Strategic Asset Review.

16. Recommendation

16.1 A recommendation will be made once the availability and cost of insurance is known.

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Appendix exempt from publication