

# WIRRAL COUNCIL

## CABINET

29 MARCH 2012

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

<b>Council Meeting</b>	<b>Date</b>
Cabinet	23 July 2009
Cabinet	9 December 2009
Cabinet	22 July 2010
Cabinet	22 September 2011