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**REPORT FOR: CABINET**

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<b>Date of Meeting:</b>	20 January 2016
<b>Subject:</b>	Future Delivery of Arts and Heritage Services
<b>Key Decision:</b>	Yes
<b>Responsible Officer:</b>	Tom McCourt, Corporate Director of Community
<b>Portfolio Holder:</b>	Councillor Sue Anderson, Portfolio Holder Community, Culture and Resident Engagement Councillor Keith Ferry, Deputy Leader of the Council and Portfolio Holder for Business, Planning & Regeneration
<b>Exempt:</b>	No except for: Appendix 5 Cultura London Business Plan Sensitivity Test which is exempt under paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended) because it contains Information relating to the financial and business affairs of Cultura London and the Council
<b>Decision subject to Call-in:</b>	Yes
<b>Wards affected:</b>	All
<b>Enclosures:</b>	Appendix 1 Cultura London Memorandum and Articles Appendix 2 Case for Support Appendix 3 Letter of Support Arts Council England

## **Section 1 – Summary and Recommendations**

This report sets out proposals to transfer the delivery of the Council's arts and heritage services at Harrow Arts Centre, Harrow Schools Music Service and Harrow Museum at Headstone Manor to a charitable trust (Cultura London) in order to sustain delivery of Council funded arts and heritage services in Harrow.

### **Recommendations:**

Cabinet is requested to:

i) Approve the transfer of Council arts and heritage services and assets (outlined in paragraph 2.1) as appropriate to a charitable trust (Cultura London) on 4th April 2016 (or other specified date) under an agreement for a period of 25 years.

ii) Approve the decision to grant leases to Cultura London of such Council properties as the charity may occupy for the purpose of the performance of the services for a period of 25 years at a peppercorn rent.

iii) Delegate the drafting of the Heads of Terms for those leases between the Council and Cultura London, for the delivery of Council arts and heritage services to Cultura London (as set out paragraph 4.1), to the Corporate Director of Community Services following consultation with the Director of Legal and Governance Services, the Portfolio Holder for Community, Culture & Resident Engagement and the Deputy Leader & Portfolio Holder for Business, Planning & Regeneration having due regard to the best interests of the Council and subject to a full satisfactory title investigation being undertaken of the Harrow Arts Centre and Headstone Manor sites.

iv) Authorise the Corporate Director of Community following consultation with the Portfolio Holder for Community, Culture & Resident Engagement, the Deputy Leader and Portfolio Holder for Business, Planning & Regeneration, the Director of Legal and Governance Services and the Director of Finance to:

- Conclude and give final approval to sign the lease(s) and Heads of Terms and/or the final Service Level Agreement for the provision of services as outlined in the body of the report
- Novate any existing contracts for the supply of services to Cultura London
- Enter into further discussions with Cultura London as required to allow for mobilisation and a start date of 4th April 2016 (or other specified date).

iv) Provide a revenue subsidy of £431k for 2016-17, representing the short fall

on the business plan of £396k for the year and thereafter of £60k per annum from 2017-18 (in relation to the Harrow Museum) to 31st March 2021, with an additional one-off £35k in 2016-17 for implementation costs (subject to the Council's budget setting processes and approval of the Medium Term Financial Strategy in February 2016).

v) Delegate authority to the Director of Finance, in conjunction with the Corporate Director Community and following consultation with the Portfolio Holders for Community, Culture and Resident Engagement and Finance & Major Contracts and the Deputy Leader of the Council, Business, Planning & Regeneration to authorise a loan of up to £1m for Cultura London for the delivery of physical improvements to Harrow Arts Centre at a fixed cost on terms to be agreed with the Director of Finance as outlined in paragraph 8.3. If 90% of the identified capital fundraising has not been realised by July 2016, then the project will be paused for the Council to review its position.

**Reason: (For recommendations)**

In May 2015, Cabinet approved the setting up of a Charitable vehicle for the delivery of arts and heritage services at Harrow Arts Centre, Harrow Museum and Harrow Schools Music Service. This report seeks approval for the transfer of services and assets from Harrow Arts Centre, Harrow Museum and Harrow Music Service to the Charitable Trust Cultura London to ensure the sustainable delivery of cultural services in Harrow whilst delivering savings for the Medium Term Financial Strategy.

## **Section 2 – Report**

### **1. Introductory paragraph**

Harrow Council is faced with £83million reduction in its funding over the next three years and as a result is having to make very difficult decisions for all services and in particular the future subsidy of non-statutory services such as arts and culture. These decisions could include the closure of facilities or the non-delivery of services. However, the Council is adopting an innovative approach in securing a future for those services which it can no longer fund directly, by seeking alternative delivery models to ensure a sustainable future for services which provide wide-ranging health and wellbeing benefits and are valued by the community in Harrow. In May 2015, the Cabinet approved the setting up of a Charitable Trust for the delivery of arts and heritage services at Harrow Arts Centre, Harrow Museum and Harrow Schools Music Service. This report seeks approval for the transfer of Council arts and heritage services to Cultural London in line with this decision and for the provision of leases, revenue subsidy and capital financing, and a Service Level Agreement on the terms outlined in the body of the report.

## 2. Background

2.1 The Council currently directly provides the following cultural services through its Arts & Heritage Service:

i) Harrow Arts Centre: delivering professional performance, events and community arts activity from a range of buildings in Hatch End centred on the Grade 2 listed Elliott Hall (former school building).

ii) Harrow Schools Music Service: 70 teachers directly deliver 700 hours of instrumental tuition every week through SLAs with schools

iii) Harrow Museum (at Headstone Manor) providing the management and development of the historic Headstone Manor site, including museum learning, participation & cultural programmes, and public access to the Local History collection.

2.2 The services are funded by the Council as follows:

SERVICE	2015/16 (£)
Harrow Arts Centre	£402,730
Music Service	39,905
Headstone Manor Museum	160,971
<b>TOTAL</b>	<b>603,606</b>

*2015-16 budget and includes maintenance budgets held corporately within the Cofely budget*

These are net figures after income and external grants (such as the Music Education Grant) are deducted and reflect controllable budgets (i.e. excludes corporate overheads and any capital financing costs). This represents the total subsidy by the Council of these services in the current financial year.

2.3 In December 2014 Cabinet approved the submission of the Heritage Lottery Fund (HLF) Round 2 application for Harrow Museum as well as Council capital funded works to buildings on site. As part of this report, Cabinet approved an options appraisal for alternative governance arrangements for Arts & Heritage services in Harrow. The HLF application was approved by the HLF in March 2015 and officers are proceeding with the necessary work to deliver the master plan for the site. In committing to the business plan, Cabinet has approved an ongoing subsidy for the Museum but this is expected to be reduced from the budgeted subsidy of £161k in 2015/16 (as in table in paragraph 2.2) to £98k in 2016/17 and further reduce annually thereafter to £60k. This could be reduced to zero from 2020/21.

2.4 At this point Harrow Council had to consider the impact of severe cuts to overall Council funding of £83m on the future of non-statutory services such as arts services in the borough, which could have resulted in the closure of Harrow Arts Centre. However, the Council listened to public concerns about

the impact such closure would have and in February 2015, Cabinet delayed making a final decision on the future of Harrow Arts Centre to enable the development of a sustainable business plan for the future of the service and to meet the MTFs savings target of £515k in 2016/17.

2.5 In May 2015, in order to support the long-term sustainability of the services, Members approved the setting up of a charitable trust for the purposes of transferring services to the new body in order to meet MTFs targets. In addition, officers outlined an outline capital scheme to improve the infrastructure at Harrow Arts Centre to provide additional revenue streams to support the viability of the Arts Centre. This first phase of development was estimated at £3.8m of which the Council would provide a £1m capital loan.

2.6 In December 2015, Members approved a draft budget which adjusted the approved MTFs saving for Arts & Heritage of £515k in 2016/17 and reduced this to with a draft revenue budget of £431k in 2016-17 and £60k per annum for the following five years. These updated MTFs figures reflect the business plan and assumptions as reported to Cabinet in May 2015, including the capital financing loan repayment of £1million. This will be subject to the Council and Cabinet final Revenue and Capital budget report in February 2016 which includes the facility for a capital loan.

### **3. Current situation**

3.1 Cultura London was incorporated on 13th August 2015 as a private company limited by guarantee company number: 9731998. The company is now also registered with the Charity Commission and has a bank account. The Articles of Association are at Appendix 1 of this report and the objects are as follows:

*The objects of the Charity are:*

- (1) to advance for the public benefit arts, culture and heritage;*
- (2) to advance education in, but not limited to, arts, music, dance and entertainment;*
- (3) to provide for the recreation of members of the public by providing services and facilities to them in the interests of social welfare with the object of improving their conditions of life; and*
- (4) the therapeutic use of music and art for the protection and advancement of good health including (but not limited to) the relief of physical and mental illness and the alleviation of development, emotional, social and behavioural difficulties .*

3.2 The charity has an interim Board and interim Chief Executive as notified to Cabinet in May 2015, with the Portfolio Holder for Community, Culture and Resident Engagement as one of the Trustees. The charity will begin recruitment to a permanent Board and CEO post as soon as possible early in the New Year. Specific skillsets have been identified for Trustees to support the sustainability of the Trust.

3.3 The Charity has begun fundraising with the general public and with individuals and has released a 'Case for Support' document (Appendix 2) and video to support the campaign.

In addition, five high profile patrons are in place and two have agreed to hold fundraising events early in the New Year. In less than a fortnight of fundraising, over £12,000 has already been pledged. Assuming a build cost of £3.8m and a capital loan provided by the Council of £1m, it would be necessary for the charity to raise funding of £2.8m ahead of the commencement of works, by mid July to meet the opening date assumed in the business plan of December 2016. The business plan has been tested to reflect a delay in fundraising and later delivery of capital projects. However, the Council will need to consider progress towards this target in July 2016 if 90% of the target (£2.420m) has not been achieved.

3.4. The table below indicates the levels of staffing currently in the three services:

Service Area	Permanent Employees	Fixed Term Employees	Casual	Non-Payroll	TOTAL
Harrow Arts Centre	8	2	5	3	18
Headstone Manor Museum	3	nil	3	nil	6
Harrow Music Service	27	4	95	nil	125
Staffing In scope	38	6	103	3	149

The service employs 'as and when' staff for performances etc. and sessional music tutors on Teachers' Pay and Conditions. Interim and agency staff are in posts where permanent appointments were not made pending consideration of the future of the services. Permanently employed staff will be subject to TUPE Regulations and will transfer to Cultura London if the recommendation is approved.

3.5 The Schools Music Service is wholly funded through the Arts Council Music Education Grant and by income from schools. In 2015-16, there has been uplift in this grant and an increase in charges to schools which has reduced the need for subsidy from Harrow Council. However, the service depends on the provision of rent free accommodation and venue hire at Harrow Arts Centre (as one of the arts & heritage services based there) and any change to this arrangement would necessitate the service seeking alternative accommodation/storage/Trinity music exams at cost elsewhere.

The costs for storage alone have been estimated at £1800 per calendar month. The service would have to generate additional income to cover any additional costs that may arise

## 4. Options considered

4.1 The following options are offered for Cabinet consideration:

### **Option A: Retention of all arts and heritage services by Harrow Council.**

As these are discretionary services, the Council is not required to provide them. Within the current envelope of the MTFS as outlined in February 2015 and December 2015, there would be no revenue to continue to subsidise these services at current levels from 2017-18 apart from the £60k for Harrow Museum. Therefore there would be risk to the continuing operation of services and any external funding could be lost or would have to be repaid (for example in the case of Heritage Lottery funding if the Museum were to close). In addition, the Council's existing capital investment in Harrow Museum could be jeopardised or would need to be increased to meet the HLF requirements if the Museum is not a charitable organisation, as approved external match-funding awards (such as John Lyons Charity) are predicated on charitable status for the Museum. Costs for closure of services are outlined in paragraph 8.8.

This is not recommended.

### **Option B: To transfer Council arts and heritage services delivery to Cultura London, a charitable trust set up for this purpose, through a management agreement for a period of 25 years specifically:**

- Harrow Arts Centre
- Harrow Music Service
- Harrow Museum and Headstone Manor

This is a model that has been adopted by other London and wider local authorities such as:

- *Vision Redbridge*. An ALMO model delivering leisure, libraries, arts and heritage services (and the Council approved the move of the music service to the provider in 2015).
- *Luton Culture* A registered charity managing libraries, arts and heritage including the Stockwood Discovery Centre, the Hat Factory arts centre, Luton Library Theatre etc.
- *Bridgend County Council (Wales)* approved the setting up of an NPDO (Charity Limited by Guarantee) to provide arts and library services for a period of 20 years in January 2015.

The aim of this option would be to enable the charity to function with a reduced Council subsidy from 2016-17 (as identified in the Cabinet report of May 2015) and from 2017-18 to £60k for Harrow Museum, reducing to £0 subsidy from 2020-21 (in line with the Heritage Lottery Grant conditions). Both the Heritage Lottery Fund (HLF) and the Arts Council England (ACE) have confirmed their support for this proposal (ACE letter Appendix 3) and the transfer of grants to the new body. The Museum collection belongs to the Harrow Museum Trust and they have confirmed that they would be happy to transfer the Collections Agreement to the new body.

Cultura London intends to maximise income generation to support activities through the delivery of a new 'indie' style two screen cinema (200 seat capacity) at Harrow Arts Centre; from either a new build or conversion of existing premises. This will be the subject of a separate planning application process, which will enable the build costs to be confirmed – these are currently assumed at £3.8m. Any development will be linked to the masterplan for the whole Hatch End site which is one of Harrow's regeneration sites. The Cultura London business plan allows a period of delivery without this income stream in the short-to-medium term to allow for this process. The business plan (which Cabinet received as a Part 2 appendix in May 2015) for Cultura London has been tested for sensitivities and this analysis is appended at Part B Appendix 5. These tables model a number of different scenarios relating to occupancy, return on film rentals and borrowing on the overall result..

A wide consultation has taken place with local residents, Friends Groups and schools and there is support for the new model which would ensure the ongoing sustainability of the services.

The charity would operate from Council premises under lease and all property and other assets would remain under the ownership of Harrow Council. It is proposed that the lease period runs concurrently with the period of the agreement (25 years) which will enable the charity to establish its business delivery and source external funding to support the services. Most funders require a reasonable period of security of tenure as part of the funding eligibility. Services will be delivered through finalised Heads of Terms (or a Service Level Agreement) to cover the following:

- Term of the agreement
- Services to be transferred to the Charity
- Services that can be delivered from premises
- Protocols for Safeguarding, Health & Safety and Equality requirements
- Regular joint Council/Charity meetings to review delivery of objects and business plan
- A number of free hires for Council meetings etc.

Cabinet is requested to:

i) Approve the transfer of Council arts and heritage services and assets (outlined in paragraph 2.1) as appropriate to a charitable trust (Cultura London) on 4th April 2016 (or other specified date) under an agreement for a period of 25 years.

ii) Approve the decision to grant leases to Cultura London of such Council properties as the charity may occupy for the purpose of the performance of the services for a period of 25 years at a peppercorn rent

iii) Delegate the drafting of the Heads of Terms for those leases between the Council and Cultura London, for the delivery of Council arts and heritage services to Cultura London (as set out paragraph 4.1), to the Corporate Director of Community Services following consultation with the Director of Legal and Governance Services, the Portfolio Holder for Community, Culture & Resident Engagement and the Deputy Leader & Portfolio Holder for Business, Planning & Regeneration having due regard to the best interests of the Council and subject to a full satisfactory title investigation being undertaken of the Harrow Arts Centre and Headstone Manor sites

iv) Authorise the Corporate Director of Community following consultation with the Portfolio Holder for Community, Culture & Resident Engagement, the Deputy Leader and Portfolio Holder for Business, Planning & Regeneration, the Director of Legal and Governance Services and the Director of Finance to:

- Conclude and give final approval to sign the lease(s) and Heads of Terms and/or the final Service Level Agreement for the provision of services as outlined in the body of the report
- Novate any existing contracts for the supply of services to Cultura London
- Enter into further discussions with Cultura London as required to allow for mobilisation and a start date of 4th April 2016 (or other specified date).

iv) Provide a revenue subsidy of £431k for 2016-17, representing the short fall on the business plan of £396k for the year and thereafter of £60k per annum from 2017-18 (in relation to the Harrow Museum) to 31st March 2021, with an additional one-off £35k in 2016-17 for implementation costs (subject to the Council's budget setting processes and approval of the Medium Term Financial Strategy in February 2016).

v) Delegate authority to the Director of Finance, in conjunction with the Corporate Director Community and following consultation with the Portfolio Holders for Community, Culture and Resident Engagement and Finance & Major Contracts and the Deputy Leader of the Council, Business, Planning & Regeneration to authorise a loan of up to £1m for Cultura London for the delivery of physical improvements to Harrow Arts Centre at a fixed cost on terms to be agreed with the Director of Finance as outlined in paragraph 8.3. If 90% of the identified capital fundraising has not been realised by July 2016, then the project will be paused for the Council to review its position.

## **5. Implications of the Recommendation**

### ***Considerations***

#### **5.1 Resources, costs**

Harrow Council Transformation Priority Initiative Funding of £165k (one-off funding) has been approved to support the setting up of the charity and the potential transfer of services and operations to the new charity. In addition,

the charity has secured £100k transition funding from the Heritage Lottery Fund to support the transfer. Furthermore the subsidy of £431k in 2016/17 enables implementation costs of £35k to support the transfer. Further costs could include the potential Pension Bond to cover the transfer of staff (or potentially the Council could act as guarantor) and their pension rights to the new body, assuming Admitted Body Status is granted.

There will be minimal (if any) impact on support services such as HR and Finance and no costs or savings to those service areas have been assumed in this report. All of these cost areas and others such as waste management and grounds maintenance have been included and suppliers have been approached for estimates (valid until Sept 2016) which have been built into the Cultura London Business Plan.

## **5.2 Assets and Property**

The freehold, and (where applicable) head leasehold, ownership of the properties involved (both Harrow Arts Centre and Harrow Leisure Centre) will remain with the Council. However, the new providers will operate under a lease to operate from the Council's facilities for the duration of the lease. Members are asked to approve leases of 25 years duration to allow the new charity to fundraise through grant applications. Most external funders require this kind of tenure length of term to secure for major capital investment.

The Hatch End site (where the Arts Centre is partly located) is one of Harrow's identified Regeneration sites and is likely to form an active development proposition during the early part of the lease arrangements. In order to meet both those objectives and those of Cultura London, it is proposed that a joint masterplanning exercise be undertaken to ensure the delivery of both. The Hatch End site has been earmarked for the delivery of 20 residential units but no detailed masterplanning or determination of the nature of the development has yet taken place. There is the potential for sale of some of the Hatch End site by Harrow Council to contribute towards the costs of the refurbishment and new build for Harrow Arts Centre or through S106 or CIL developer contributions

It is important to note that to fully protect the Council's position it will be necessary to ensure that the prospective lease demise for Harrow Arts Centre allows for this future potential development. Therefore provision will be made within the leases to enable the Council to (a) serve notice to redevelop sites; (b) cease or alter or suspend the provision of the service; and (c) require the service to be provided from an alternative location though any exercise of these options could have financial implications for the council depending on the lease and Service Level Agreement terms agreed with Cultura London.

## **5.3 Staffing/workforce**

It is expected that Council arts and heritage staff in scope will transfer to Cultura London under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), which would include, either continued access to the Local Government Pension Scheme or to a broadly comparable pension scheme. If Members approve the new delivery model for arts & heritage services, there will be a TUPE situation affecting approximately 38 Council staff plus sessional music tutors on Teachers' pay and conditions. In the event of TUPE applying, the Council will comply with

the requirements of TUPE. In essence, staff continuity of service and any other rights are all preserved at the point of transfer. Both the Council and the new employer are required to inform and consult employees affected directly or indirectly by the transfer. The Council will conduct a thorough staff engagement process in line with statutory and local requirements. Through the Departmental consultative forum, regular communication has been held with the Trade Unions on this project and regular communications with both unions and staff will continue during the process, if Members approve the recommendations.

#### **5.4 Contractual impact**

The existing Council contracts for ICT services and for Facilities Management for the Arts and Heritage Services permit the Council to terminate the contracts without fault at no cost and therefore if Members approve the recommendation, Cultura London will have the ability to opt out of these services with no financial impact to the Council (and potentially a small saving to those budgets). This will enable Cultura London to reduce overheads, as a small charity will be able to source this kind of support elsewhere at reduced costs compared to the Council enabling the reduction of the Council subsidy.

#### **5.5 Performance Issues**

In 2014/5:

- 250,680 people attended Arts Centre performances compared to 197,958 in 2013/14 and there were 18,576 visits to the Museum
- Total income for HAC and the Museum was £579,327
- Audience fill rates have increased from 57% in 2011/12 to 78% in 2014/15
- In 2014/15, 14,718 volunteer hours were delivered across the services
- 12.7% of the total school population of children accessed private music tuition through the Music Service.

The business plan for Cultura London includes the charity's performance targets for all three services. Those for Harrow Museum have already been agreed by Cabinet as part of approving the Museum business plan for the Heritage Lottery Grant Fund.

#### **5.6 Environmental Implications**

Any new build would conform to Harrow carbon reduction targets and required national and local BREEAM ratings.

### **6. Risk Management Implications**

Risk included on Directorate risk register? No

Separate risk register in place? Yes

6.1 A full risk register is in place for this project. Key risks and mitigation are as follows:

- i) Harrow Council does not agree to transfer the services because the Cultura London business plan is not considered to be robust enough and income levels are considered unachievable.

*Mitigation*

Industry experts have been consulted across a number of areas within the Business Plan. Their advice has been used to set the income targets and the validity and feasibility of the plan itself. The business plan has been reviewed by Finance and tested for sensitivities. Cultura London Trustees will be responsible for delivering the business plan.

- ii) Due diligence reveals costs of operation will be too high in relation to:
  - a) Staffing pensions
  - b) support services

*Mitigation*

Historic pension costs are included within business plan. A Pensions Bond will be in place or Harrow Council can be a guarantor around pensions for staff where the Council has a legal obligation. Estimates and quotes with support services suppliers have been negotiated and reflected in the business plan (guaranteed to remain at the same estimate until September 2016 in case of delay to start date).

- iii) Failure to recruit to Board.

*Mitigation*

The interim Trust and Directors of the Charity are leading on the recruitment. A skills audit has been carried out to assist in the preparation of job descriptions that will help to attract potential trustees with the relevant skill sets.

- iv) Funding for Capital Development:
  - a) not achieved

*Mitigation*

Fundraising has already started with a social media publicity campaign and town centre awareness-raising sessions around the borough. The draft Council budget December 2015 indicated a capital sum up to £1 million for this project and this loan repayment is costed in the draft business plan. A Quantity Surveyor (QS) has been commissioned and due diligence will be carried out prior to any capital project commencing. Alternative options to full scale rebuild are under consideration. All capital plans will be subject to planning consents. In the event that the fundraising cannot be achieved the business plan would need to be reviewed for affordability of any alternative options that are subsequently proposed.

- v) Income projections not achieved.

*Mitigation*

A limited operation based on the amount of revenue available/achievable could be operated at Harrow Arts Centre. This could lead to a reduction in staff costs (e.g. 'as and when' to support performances) Frequent consultation with users will be held to ensure that the right product is on offer at the right price. Museum wedding/functions bookings look on line to meet targets set.

- vi) Schools source music education elsewhere.

*Mitigation*

Continuing dialogue with schools to assess need. Continuing benchmarking of costs. Good take-up by schools to date and officers successfully negotiated an increase in the Arts Council Music Education Grant.

- vii) Funding delays require adoption of new phasing or a new Masterplan

### *Mitigation*

The Architect has produced a revised Masterplan which is currently being costed. Alternative service delivery models can be adopted for the first year of operation to deliver a reduced offer to allow for re-phasing, planning processes etc. such as temporary locations for cinema functions.

viii) Fluctuations in build costs – need to recognise that costs may go up as well as down and that much of this risk is outside the control of the council.

### *Mitigation*

A QS has been commissioned and due diligence will be carried out prior to any capital project commencing. The charity will have to consider the affordability of its project based on the QS assumptions.

## **7. Legal Implications**

7.1 The council has discretionary powers to provide arts, heritage and music services. The council can choose to provide all or any of these services through contractual arrangements with any third party provider, including Trusts or Non-profit distributing organisations (NPDOs.).

7.2 There are a number of legal powers that support the proposal for moving arts and heritage services provision to an external provider, as follows:

a) Section 19 (1) of the Local Government (Miscellaneous Provisions) Act 1976: local authorities have power to provide such recreational facilities as they think fit and they also have power to enter into a contract with another person in connection with the provision of those facilities under section 1 of The Local Government (Contracts) Act 1997 and section 1 of the Localism Act 2011.

b) General power of competence: Section 1 of the Localism Act 2011 gives the Council power to do anything individuals may do and this includes entering into contracts for services and leasing arrangements.

c) Power to grant leases or licenses: The Council has the power to dispose of property under s123 of the Local Government 1972 Act. This is subject to an obligation to obtain the best consideration that can reasonably be obtained (except for leases of seven years or less) unless the Secretary of State's consent is obtained for the disposal whether by means of a general consent or otherwise. Consent is deemed to be given, provided that the undervalue does not exceed two million pounds, where the Council considers that the purpose for which the land is to be disposed of is likely to contribute towards one or more of the objects in respect of the whole or part of the Council's local area or of all or any persons resident or present in its area as set out at Circular 06/03: Local Government Act 1972 (General Disposal Consent (England) 2003 paragraph 2, being the promotion or improvement of economic, social or environmental well-being . If the undervalue exceeds 2 million pounds then an application for express Secretary of State Consent will need to be made.

7.3 Legal issues to be finalised in the Service Level Agreement and transfer documents include:

- Back office service agreement – the new Trust could consider buying back certain services from the Council, perhaps for a transitional period (for example, payroll, HR and/or IT). This arrangement would be set out in a back office service agreement. Local authority provision of support services can sometimes result in hidden subsidies, giving rise to State Aid issues. The business case for Cultura London does not indicate the need for back office service agreements.
- Contracts/grants – that will transfer from the Council to the Trust and whether these can be transferred to the new entity or if the consent of the other parties is required. The Heritage Lottery Fund has indicated in principle that the HLF Round 2 grant of £3.6 million for Headstone Manor can be transferred to the new charity for delivery. ;
- Staff– who are the PAYE employees of the Council and who will transfer to the new Trust under TUPE;
- Pension provision for staff – and the extent to which the new Trust will be required to match the pension provision of the transferring staff;
- Freehold or leasehold land or other property arrangements – that will transfer or be leased to the new Trust – see further below.
- Other assets of the Service – including the physical assets, intellectual property (such as publications and branding, etc.) and funding commitments;
- Liabilities of the Service – such as debts, disputes with employees and third parties, reputational issues, loans, etc.

7.4 Section 123(2) of the Local Government Act 1972 ("1972 Act") states that a Council may not (except with without ministerial consent) dispose of land at less than the best consideration that can reasonably be obtained (other than disposals of leases 7 years or less). The current proposal would involve leases longer than 7 years and gives rise to a disposal/s at less than best consideration given that the rent reserved will be a nominal peppercorn. Accordingly, Secretary of State consent would be required, unless the General Disposal Consent 2003 applies. This gives a blanket consent where the undervalue is less than £2m and the disposal will help to secure the promotion or improvement of the economic, social or environmental well-being of the Borough. Cabinet will need to be satisfied that those criteria will be met by the proposed arrangements. and that there are no title issues following the completion of property due diligence that impact or may impact o the proposal.

7.5 Notwithstanding that the General Disposal Consent 2003 may apply, when disposing of land at an undervalue, the Council should remain aware of the need to fulfil its fiduciary duty in a way which is accountable to local people.

## **8. Financial Implications**

8.1 The Council is facing funding cuts of £83million over the next three years which has meant there are difficult decisions to make for the future delivery of services. The MTFs approved by Cabinet and Council in February 2015, agreed that the Arts & Heritage service could no longer be subsidised, , saving the Council £615k, reducing the budget in 2015-16 by £100k and the balance of £515k in 2016/17.

It would not be possible to deliver in full the 2016-17 saving, other than closure of the Arts Centre and Harrow Museum. However, the Council has listened to the community and is seeking to ensure the long-term financial viability of arts and heritage services in the borough.

8.2 Para 2.2 details the 2015/16 budget for Arts & Heritage services of £604k.

i) The May 2015 Cabinet report and business plan for Arts & Heritage services indicated that alternative governance structures could deliver, subject to key assumptions, a small surplus by April 2017 and assumes the continued Council contribution towards the museum of £60k per annum until 31<sup>st</sup> March 2021, to meet the HLF grant requirements.

The table below details the business plan position for the next five years to 31<sup>st</sup> March 2020, and notes the deficit/(surplus). Also reflected is the adjustment to the business plan balance arising from the changes to loan assumptions increasing the rate from 3.1% to 7% and reducing the term from 30years to 25years in line with the proposed management agreement.

	2015/16	2016/17	2017/18	2018/19	2019/20
	£000	£000	£000	£000	£000
BP May 2015	576	350	(66)	(179-3)	(181)
Loan 25yrs @ 7%		46	44	42	40
Revised BP		396	(22)	(137)	(141)

ii) The draft budget report agreed by Cabinet in December enables a subsidy of £396k to be paid to Cultura Ltd for the financial year 2016/17, together with a one-off amount of £35k for implementation costs – a total of £431k. The budget movements are detailed below:

Original budget £604k  
 February approved budget reduction £(515k)  
 December approved budget adjustment £342k  
 Available budget 2016/17 £431k

iii) The latest business plan assumes build cost of £3.8m and the repayment of a £1m loan from the Council over 25 years at a rate of 7% (consistent with the commercial rate being applied to the Concilium Group) and reflects both capital and interest repayment. The Council will review progress towards the capital funding target and consider its position if 90% (£2.420m based on 90% of the total estimated build cost of £3.8m, less the £1m Council loan) of the target of £3.8m is not achieved. In the event that capital funding cannot be raised, Cultura London would review its business plan for affordability which would include the Council contribution of £431k in 2016/17.

iv) The plan assumes the new cinema will be opened by December 2016, requiring the charity to hold in its bank account funding of £2.8m ahead of the commencement of works by mid July, to meet the opening date assumed in the business plan of December 2016.

v) The company is limited by guarantee of £1 from each trustee. In the event that the company was no longer able to trade and repay loans, the Council would be responsible for the loan repayments. However the asset would remain under Council ownership, enabling a potential income stream to be maintained or sale to mitigate (at least in part) the cost of the loan.

vi) Maintenance services are expected to be continued to be delivered by the Cofely budget and assumed within the business plan. In the event that Cofely are no longer required to provide maintenance, it is assumed that there will be a corresponding reduction in the Facilities Management contract value.

8.3 The capital cost has been included in the draft budget Cabinet Report. The capital programme would need to reflect the total programme spend, funded by the loan and supported by the appropriate evidence of the non-council funded resource secured by the board

8.4 Appendix 5 (Part 2) illustrates the impact on the Council subsidy of changes to key business plan assumptions. For example occupancy levels are key to the income assumptions, and if these were to fall from the 31.5% assumed, this would turn a surplus of £66k into a deficit of £107k. There are a number of factors which could affect occupancy, including adequate parking arrangements at peak periods.

## **9. Equalities implications / Public Sector Equality Duty**

9.1 An extensive consultation process has already been undertaken with staff, local residents' associations, existing Arts Centre customers, and through Open Days and stalls in Harrow Town Centre etc. These include 'visioning' workshops for the future of the Arts Centre. The majority of those involved supported the idea of the Arts & Heritage services being transferred to a charity and for the redevelopment of the Arts Centre to deliver a cinema offer.

9.2 An Equalities Impact Assessment has been conducted (Appendix 4) and no negative impacts have been identified for any of the protected characteristics. There could be a positive impact on all characteristics but particularly age if the Arts Centre remains open and serving the community. If the services move to a Trust then there will be a TUPE situation for staff but no negative impacts have been identified for any particular protected characteristic. The proposals will enable the sustainable delivery of arts and heritage services to existing and potential users when the Council can no longer support these services with subsidy

## **10. Council Priorities**

The proposal delivers the Council's vision as follows:

**Working Together to Make a Difference for Harrow**

- Making a difference for the vulnerable by continuing to offer arts and heritage events and activities to support mental and physical health and wellbeing, particularly for older people, young people and those with learning difficulties.
- Making a difference for communities by offering a wide range of events and activities to reach different communities in the borough and to ensure a rich mix of cultural offer to support residential regeneration.
- Making a difference for families by offering cultural events and activities for all ages and to support educational attainment e.g. music tuition, 100% Producers, Family Fun Days etc.

### **Section 3 - Statutory Officer Clearance**

Name: Donna Edwards	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 11 January 2015		
Name: Stephen Dorrian	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 16 December 2015		

<b>Ward Councillors notified:</b>	<b>NO, as it impacts on all Wards</b>
<b>EqIA carried out:</b>	<b>YES</b>
<b>EqIA cleared by:</b>	Alex Dewsnap Chair of Corporate Equalities Task Group

## **Section 4 - Contact Details and Background Papers**

**Contact:** Marianne Locke Divisional Director Community & Culture 020 8736 6530 x 6530  
marianne.locke@harrow.gov.uk

### **Background Papers:**

Cabinet Report and decision Future Options for Harrow Arts Centre, Harrow Museum and Harrow Music Service 21<sup>st</sup> May 2015

<http://www.harrow.gov.uk/www2/ieListDocuments.aspx?CId=249&MId=62363&Ver=4>

**Call-In Waived by the  
Chairman of Overview  
and Scrutiny  
Committee**

**NOT APPLICABLE**

*[Call-in applies]*