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AYLESBURY VALE DISTRICT COUNCIL Democratic Services

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24 August 2015

CABINET

A meeting of the **Cabinet** will be held at **6.15 pm** on **Tuesday 1 September 2015** in **The Olympic Room, Aylesbury Vale District Council, The Gateway, Gatehouse Road, Aylesbury, HP19 8FF**, when your attendance is requested.

NOTE: There will be an informal session starting at **6.15 pm** to give Members the opportunity to comment on issues on the Agenda. The press and public may attend as observers.

Membership: Councillors: N Blake (Leader), S Bowles (Deputy Leader), J Blake, A Macpherson, H Mordue, C Paternoster and Sir Beville Stanier Bt

Contact Officer for meeting arrangements: Bill Ashton; bashton@aylesburyvaledc.gov.uk; 01296 585040

AGENDA

1. APOLOGIES

2. MINUTES (Pages 1 - 6)

To approve as a correct record the Minutes of the meeting held on 14 July, 2015 attached as Appendix A.

3. DECLARATIONS OF INTEREST

Members to declare any interests.

4. EMPLOYEE INDEMNITY (Pages 7 - 12)

Councillor Mordue
Cabinet Member for Finance, Resources and Compliance

To consider the report attached as Appendix B.

Contact Officer: David Thomas (01296) 585158

5. AYLESBURY WATERSIDE THEATRE CONTRACT REVIEW (Pages 13 - 16)

Councillor Mordue
Cabinet Member for Finance, Resources and Compliance

To consider the report attached as Appendix C.

Contact Officer: Paul Marston-Weston (01296) 585116

6. VALE LOTTERY (Pages 17 - 24)

Councillor Mrs J Blake
Cabinet Member for Business Transformation

To consider the report attached as Appendix D.

Contact Officer: Andy Barton (01296) 585430

7. EXCLUSION OF THE PUBLIC

The following matter is for consideration by Members "In Committee". It will therefore be necessary to –

RESOLVE –

That under Section 100(A)(4) of the Local Government Act, 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in the Paragraph indicated in Part 1 of Schedule 12A of the Act.

Aylesbury Waterside Theatre 5 year contract review (Paragraph 3)

The public interest in maintaining the exemption outweighs the public interest in disclosing the information because the report contains information relating to the financial or business affairs of organisations (including the Authority holding that information) and disclosure of commercially sensitive information would prejudice negotiations for contracts and land disposals/transactions.

8. AYLESBURY WATERSIDE THEATRE CONTRACT REVIEW (Pages 25 - 78)

(Category – Paragraph 3 of Part 1)
Councillor Mrs J Blake
Cabinet Member for Business Transformation

To consider the attached confidential information (Appendix A).

Contact Officer: Paul Marston-Weston (01296) 585116

CABINET

(Held at the John Colet School, Wendover)

14 July, 2015

PRESENT: Councillor N Blake (Leader of the Council); Councillors Mrs J Blake, Bowles (Deputy Leader), Mrs Macpherson, Mordue, Mrs Paternoster and Sir Beville Stanier. Councillors C Adams, Hetherington, Southam and Strachan attended also.

APOLOGIES: There were none.

INFORMAL QUESTION TIME

Prior to the commencement of the formal business of the meeting, Cabinet Members responded to questions from members of the public and local Ward Members present on a number of matters, including the following:-

- A local resident enquired whether there were any plans to celebrate the diamond jubilee of the granting of the Freedom of Aylesbury to RAF Halton. The date of the anniversary was 24 April 2016. The Freedom of Aylesbury had been granted by the former Aylesbury Borough Council. The Freedom Charter now formed part of historic regalia held by Aylesbury Town Council. AVDC had granted RAF Halton the Freedom of the entire District in October 2010, and personnel from the technical training school had participated in at least two events in different parts of the Vale involving a formal march past and salute.

The Cabinet Member for Community Matters, Leisure and Civic Amenities indicated that she would ask the relevant officers of the Council to explore the opportunities for working collaboratively with any interested local authorities and the Local Area Forum concerning some form of event to mark the anniversary. The local resident concerned would be advised of any proposals that might be agreed.

- The Leader of the Council explained that AVDC remained fully supportive of initiatives to protect the bio-diversity of the District, particularly those pursued by voluntary agencies such as the Vale Conservation Volunteers. However, the Council's own dedicated staffing arrangements had had to be reviewed, (and indeed, together with all service areas, would continue to be the subject of review), as part of the Council's desire to ensure the delivery of cost efficient services, which recognised the need to identify new sources of income to offset significant reductions in Government grant.
- The Leader of the Council, in response to a question from one of the Local Ward Members drew attention to grant funds available via the "Community Chest" which might possibly assist with the acquisition of a mini bus for use by cadets attached to the RAF Technical Training School. The Ward Member concerned was encouraged to speak with one of the Council's grants officers to explore the possibilities and criteria for making application.

- The County Councillor for the Wendover Division commented that he appeared to receive a relatively large number of complaints concerning the activities of the Vale of Aylesbury Housing Trust (VAHT), particularly the grass cutting arrangements. It was believed that the Trust employed an officer dedicated to dealing with issues within the Vale and the County Councillor was encouraged to make contact directly with the Trust. The Cabinet Member for Business Transformation reminded the Member (who was also a District Councillor) that representatives of the Trust were invited at least once a year to meetings of the Environment and Living Scrutiny Committee, and that the next such occasion would be an ideal opportunity to raise directly with them any issues of particular concern.
- Reference was made to the recent publicity given to proposed increases in car parking charges in Aylesbury. The audience was reminded that the charges had not been revised for some time and that they were not excessive compared with other towns and cities both regionally and nationally. In the case of at least one of the town centre car parks it was indicated that a primary objective was to ensure that the relatively limited number of spaces were available for users of the nearby leisure facility. Those users were able to obtain a refund. Prices were pitched at a level that ensured that the costs of the service were covered.

The audience was reminded of the continuing (and significant) investment being made in the regeneration of Aylesbury Town Centre and its retail offer and that the Council was fully cognisant of the need to review car parking charges as well as the need to maintain a vibrant town centre.

- Reference was made to the need for more or perhaps larger dog bins in a particular area within Wendover which was well used by dog walkers. The audience was reminded of the arrangements for the provision and emptying. The Parish Council had a primary role in the former. It needed to be remembered that there were still a number of open spaces in the location referred to specifically that had not yet been adopted.

At the conclusion of the question time session, the Leader of the Council thanked those present for their attendance and contribution to the meeting and indicated that they were welcome to remain for the remainder of the meeting. Indeed, in view of its local interest members of the audience were invited to comment on or ask questions about the proposal to establish a National Paralympic Heritage Trust (Minute 2 below).

1. MINUTES

RESOLVED –

That the Minutes of 16 June, 2015, be approved as a correct record.

2. THE NATIONAL PARALYMPIC HERITAGE TRUST

Members were advised of an invitation for the Council to become a member of a new charitable trust (a company limited by guarantee) and provisionally to be known as "The National Paralympic Heritage Trust". The other members of the trust would be the British Paralympic Association, "Wheelpower" and Bucks County Council. The formation of the trust was being co-ordinated by "Wheelpower" and the legal work was being funded by a start-up grant from the Heritage Lottery Fund. The Trust would be responsible for collating, maintaining and preserving the heritage of the Paralympic movement, making it available to audiences in both a physical and virtual form. The Chairman of the project steering group gave a brief presentation on the aims and objectives of the proposal and responded to questions from Cabinet Members and members of the audience.

The Paralympic Heritage Trust would map, conserve and make available to national audiences, collections and archives relating to the British Paralympic movement. It would create an accredited permanent heritage centre at Stoke Mandeville Stadium, the birthplace of the movement, a national network of satellite exhibitions and a virtual museum. The project would also run outreach activities.

The Trust would raise awareness about the story of the Paralympics which had been instrumental in changing attitudes and expectations of disabled people, thus helping to improve access and remove discrimination for the 10 million disabled people in the UK. It would also raise awareness of the local area as the birthplace of the Paralympic movement, and the pioneering medical work undertaken at the National Spinal Injuries Centre. This would help meet the objectives of the Bucks Legacy Board to use the unique selling points of the area to provide better and more inclusive opportunities for the District's residents, businesses and visitors.

It was envisaged that, as a second stage of development, the Trust would be the body to commission the Paralympic Flame Lighting Ceremony associated with the 2018 and all future summer and winter Paralympic Games. The Cabinet report, posted on the Council's website, contained a more detailed commentary on the legacy of London 2012, and the Paralympic heritage.

RESOLVED –

- (1) That approval be given to the formation of the National Paralympic Heritage Trust, an independent charitable company, limited by guarantee, in partnership with the British Paralympic Association, Bucks County Council and "Wheelpower" (British Wheelchair Sport).
- (2) That the Chief Executive, after consultation with the Leader of the Council, be authorised to approve and establish the company structure and associated detailed arrangements.
- (3) That two trustees be appointed to the Trust Board, one Member to be appointed by the Leader of the Council and one officer to be appointed by the Chief Executive, after consultation with the Leader of the Council.

3. LEGAL SERVICES PROVIDER

At the meeting in April, the Council had agreed to the future provision of legal services through a third party and a report was submitted summarising how this would be governed and the arrangements for switching over to the external provider.

The supply of appropriate and timely legal advice was fundamental to the smooth running of many of the Council's services. This had led to consideration being given to different delivery models.

Since 2012/2013 the costs of the service had been reduced from circa £742,000 to circa £600,000. It had been considered that this could be reduced further through demand management (i.e. reducing the volume of legal work), and through different models of service delivery based upon detailed analysis of the demand from services. Council had subsequently agreed to an arrangement involving a third party provider. The Chief Executive, after consultation with the leader of the Council, had been authorised to deal with the selection of a provider. It was reported that since the matter had last been discussed, all legal services staff employed by the Council had either left or were due to leave and as such there were no TUPE considerations. It was therefore proposed to arrange for the supply of legal services through a straightforward contractual provision.

The following key objectives/issues had been taken into account in the consideration of suitable providers:-

- The speed of switchover, bearing in mind the reduced in-house provision.
- Ease and cost efficient procurement route. Bearing in mind the level of the annual contract sum involved, a standard procurement would dictate a full EU OJEU level exercise, which had the potential for significant costs and time delays.
- Locality of provider, given the need to enable face to face delivery of service where operationally necessary.
- Existing successful delivery of similar local authority services covering District Council functions, and the ability to deliver unitary level services should these be required in the future.
- Knowledge of the issues facing AVDC and where possible experience of working on the full range of legal services required by the Council – especially those of a more innovative nature, e.g. commercial projects, property and company ownership and creation.
- Ability to provide additional robustness and flexibility to the legal service so as to manage peaks and troughs to ensure the requirement for legal provision and thus ensuring the smooth running of the Council.

Taking the above into account and having explored the market place, the Leader of the Council and Chief Executive had, in accordance with the authority given previously, pursued more detailed discussions with HB Public Law. HB Public Law had been created in 2012 by combining Harrow and Barnet's legal teams in a shared service and had in excess of 70 members of staff. They were a local authority legal

practice specialising in public law, providing services to local authorities, maintained schools, academies, local authority trading companies and housing associations.

As HB Public Law were a fellow local authority, the procurement could be delivered via an inter - authority agreement (IAA), considerably speeding up the delivery of the service. An IAA was in effect a contractual relationship between the two councils that had the benefit of avoiding some of the procurement burden.

The detail of how the relationship with HB Public Law would be governed would be set out in a full IAA document. This was however still the subject of negotiation. In summary, the IAA would set out:-

- The relationship between AVDC and HB Public Law.
- The financial model.
- Service standards.
- Performance monitoring.
- Staffing.
- Intellectual property considerations.
- Disputes and determination.

As set out in previous reports, the Council would continue to hold a Monitoring Officer post at AVDC, at least for the medium term and would continue with the current part time arrangement. The Monitoring Officer would also act as the contract manager for the HB Public Law IAA.

As HB Public Law were already providing interim provision to AVDC, it was envisaged that the transition to full provision would be relatively straightforward. Detailed project plans were in place and following formal agreement by the Council, and the finalisation of the IAA, these would be brought into force. It was anticipated that the start date for full provision would be 1 September, 2015. However, due to the existing interim service provision, in reality the change in provider should be seamless and occur gradually up to the inception date.

RESOLVED –

- (1) That the update on progress with appointing a legal service provider be noted and the report recommendations approved insofar as they relate to the executive functions of the Council in accordance with Section 101 of the Local Government Act 1972 1nd of the Local Government (Arrangements for the discharge of Functions) (England) Regulations 2012.
- (2) That Council be also recommended to approve the following:-
 - (a) That the provision of Council legal services be delegated Harrow Council which operated a shared legal service known as HB Public Law (as detailed in the Cabinet report).

- (b) That the provision of these services be for up to five years and be governed by an Inter-Authority Agreement (IAA), commencing from 1 September, 2015, subject to satisfactory final arrangements being completed.
- (c) That the final delivery and implementation of the above decisions, including the detail of the IAA, be delegated to the Chief Executive, after consultation with the Leader of the Council.

REVISED INDEMNITY RESOLUTION

Councillor Mordue

Cabinet Member for Finance, Resources and Compliance

1 Purpose

- 1.1 To update the existing indemnity resolution in place since it was passed by the Personnel Committee in 1997. This is purely to reflect changes in legislation and the regulatory framework since 1997.
- 1.2 This is required so that our indemnity resolution reflects the applicability of our Employers Liability Policy.

2 Recommendations/for decision

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| 2.1 Approve the revised indemnity text as in Appendix 1. |
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3 Supporting information

- 3.1 There are several sets of regulation where both the authority and individuals may be in a position to have to defend themselves against criminal proceedings where there is 'reverse burden of proof'.
- 3.2 Reverse burden of proof is where it is up to the defendant to convince the court that they have done enough to comply with the law. This differs from other trials where it is up to the prosecution to convince the court that the defendant has transgressed.
- 3.3 AVDC, in line with other businesses, has had an indemnity resolution in place for a number of years, although it has not been reviewed for 16 years.
- 3.4 Opportunity has been taken to increase the applicability with regards to the Road Traffic Act and other primary Fire and Health and Safety Legislation with our insurers via our Insurance Officer and have appended reference and amended text accordingly (Appendix 1).
- 3.5 A recent incident at the depot has highlighted the need to update what is an outdated policy.
- 3.6 Levels of fines and costs have increased significantly since 1999 with the council having to ensure that it is capable of defending itself adequately.
- 3.7 Since the recent review by the Sentencing Council, far more severe custodial sentences are being more actively sought for health and safety offences including jail (32 cases since November 2014)
- 3.8 Following recent reviews of criminal justice and the reduction of legal aid, courts are less likely to award costs should you be acquitted in court.
- 3.9 This review is part of a wider review of Health and Safety including our 'Critical Incident Plan' and health and safety arrangements.
- 3.10 There is no cover for a breach of Environmental Legislation such as the Environmental Protection Act 1990; the Council would have to meet any defence costs from reserves.
- 3.11 The wording of the indemnity covers both the applicability of our existing Employers Liability Policy (Appendix 2) and should we have a different insurance provider in the future.

4 Options considered

- 4.1 None – this is something that does need to be maintained, reflecting changes in UK legislation.

5 Reasons for Recommendation

- 5.1 To clarify wording to reflect changes in legislation since the Health and Safety at Work etc. Act was created in 1974, most significantly the Corporate Manslaughter and Homicide Act 2007 and Management of Health and Safety at Work Regulations 1999
- 5.2 To ensure that the Council and its officers have recourse to suitable defence for carrying out its work noting the increase in health and safety penalties and custodial sentences served over the past 12 months.

6 Resource implications

- 6.1 None

Contact Officer

David Thomas 01296 585158

Revised “Indemnity” Resolution – Update wording for Cabinet, September 2015 2015

Part A

1. Subject to the exceptions and other conditions listed below the Council will indemnify all its employees against any expenses liability loss claim or proceedings whatsoever arising from their neglect act error or omission (other than conduct of a reckless or wilful nature) in the course of their employment (whether they were acting for the Council itself or another person or body with the Council’s consent).
2. The amount covered under Employers Liability with our insurers on 15/05/15 is £25m.

Exceptions

3. The indemnity will not extend to loss or damage directly or indirectly caused by or arising from:
 - (a) Fraud, dishonesty or a criminal offence committed by the employee (except when the criminal offence is an offence under the legislation detailed in the Annex)
 - (b) Any neglect, act, error or omission by the employee otherwise than in the course of his/her employment
 - (c) Liability in respect of surcharges made by the District Auditor or orders made under S.19 of the Local Government Finance Act 1982
 - (d) Where there is another subsisting indemnity or insurance cover applicable to the situation.
4. The indemnity will not apply if an employee, without the express permission of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this resolution.

Other Conditions

5. In pursuance of the indemnity above, the Council undertakes not to sue (or join others in an action as co-defendant versus) an officer or the Council in respect of any neglect, error or omission by the officer in the course of his/her employment, but subject to the same exceptions as in paragraphs 3 and 4 above.
6. That the above indemnity and undertaking shall be without prejudice to the right of the Council to take disciplinary action against an employee in respect of any neglect, act, error or omission.
7. That the above indemnity and undertaking apply:
 - (a) Retrospectively to any neglect, act, error or omission which may have occurred before this date and;
 - (b) After the retirement or resignation of the employee concerned as well as during employment with the Council.

8. Upon the happening of any accident or event which may give rise to a claim or claims and/or upon the receipt by the employee or past employee of notice of any claim, that person shall immediately give notice of the same to the Council and shall without delay give such further information and particulars as may be required.
9. The employee or past employee shall at all times exercise or have exercised reasonable care to prevent claims arising, and undertake or have undertaken his/her duties in a diligent manner.

Annex

Due to the nature of the following legislation indemnities will extend to other legislation where legal action could be taken against both the local authority and in some cases employees as well (in effect if AVDC and individual officers are under investigation and suspected of having committed an offence). Examples include:

- Health and Safety at Work etc. Act (1974) and Regulations made under Section 15 of the Act
- Corporate Manslaughter and Homicide Act 2007
- Regulatory Reform (Fire Safety) Order 2005
- Road Traffic Act 1988

Appendix 2 – Wording of our Employers' Liability (EL) Section- Travelers Insurance 15/05/15

Health and Safety at Work Act Prosecution Defence Costs

The Company will indemnify the Named Insured and at the request of the Named Insured any Employee of the Named Insured subject to the Limit of Indemnity as stated in the Schedule in respect of legal costs and other expenses reasonably incurred with the Company's written consent in the defence of any criminal proceedings brought or in an appeal against conviction arising from such proceedings in respect of a breach of the Health and Safety at Work etc. Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978 or any similar UK health and safety legislation¹ and regulations committed or alleged to have been committed during the Period of Insurance in the course of the Business².

Road Traffic Act 1988 – in a case where an employee is driving any vehicle whilst working on behalf of Council the EL would provide cover in the event of them making an injury claim following and accident.

Provided that

- (a) In relation to any appeal counsel has advised there are strong prospects of such appeal succeeding
- (b) The proceedings relate to the health safety or welfare of any Employee
- (c) The Indemnity will not apply to
 - (i) Proceedings consequent upon any deliberate act or omission
 - (ii) Fines or penalties of any kind
 - (iii) The bringing of any appeal solely against the amount of any or penalty
 - (iv) Any circumstances where Indemnity is provided by any other Insurance or where but for the existence of this clause 4 of the Cover indemnity would have been provided by such other Insurance

Corporate Manslaughter and Corporate Homicide Act 2007 Defence Costs

The Company will Indemnify the Named Insured in respect of all costs of legal representation incurred with the Company's written consent for

1. The defence of any criminal proceedings or
 2. In an appeal against conviction arising from such proceedings
- Brought against the Named Insured for an offence of corporate manslaughter or corporate homicide arising under the Corporate Manslaughter and Corporate Homicide Act 2007 (or

¹ E mail from Underwriting Account Manager 30.09.13 confirms that this is applicable

² Note - Employee passengers and other third parties would be covered under the PL cover of our Motor Policy if our driver was at fault unless an Employee was driving their own vehicle. If an Employee is driving their own vehicle any passengers or third parties would claim against the employees own Motor Policy. If the other driver was at fault they could all claim against the third party (E mail from Insurance Officer 15.04.15)

any subsequent amending legislation thereof) committed or alleged to have been committed during the Period of Insurance in the course of the Business.

Provided that

- (a) In relation to any appeal counsel has advised there are strong prospects of such appeal succeeding
- (b) the proceedings relate to the death of any Employee
- (c) the indemnity will not apply to
 - (i) proceedings consequent upon death resulting from any deliberate act or omission but this exclusion shall not apply where death is caused by the way in which the Business is managed or organised by the Named insured and amounts to a gross breach of a relevant duty of care owed by the named Insured to the deceased.
 - (ii) Fines or penalties of any kind
 - (iii) Any circumstances where indemnity for defence costs is available from any other source or is provided by any other insurance or where but for the existence of this clause 5 of the Cover indemnity would have been provided by such other source or Insurance.
- (d) the financial limit of the Company's liability under this clause 5 of the Cover shall not exceed in the aggregate in respect of all acts or omissions committed or alleged to have been committed during the Period of Insurance the amount stated in the Section Schedule as the Limit of Indemnity and for the avoidance of doubt this financial limit amount under this clause 5 of the Cover shall form part of any not be addition to the Limit of Indemnity.
- (e) for the avoidance of doubt where there is a Deductible stated in the Section Schedule (or any claim reimbursement amount instead of a Deductible otherwise agreed) it shall apply in respect of this clause 5 of the Cover and the amount of the Deductible or such claim reimbursement amount shall form part of the specified amount detailed in (d) above as the Company's limit of liability and such limit shall not apply in excess of the amount stated as the Deductible or claim reimbursement amount.

Compensation for Court Attendance

Where at the request of the Company or their representatives any of the undermentioned persons attend a court or tribunal or other forum as a witness in connection with a claim in respect of which the insured is entitled to indemnity under this Section of the Company will at their discretion provide compensation to the

AYLESBURY WATERSIDE THEATRE - YEAR 5 CONTRACT REVIEW

Councillor Mordue

Cabinet Member for Finance, Resources and Compliance

1 Purpose

- 1.1 The purpose of this report is to advise Cabinet of the outcome of the 5 year review of the Aylesbury Waterside Theatre Contract and to agree the proposed financial terms and other items jointly proposed by the Council and the Ambassador Theatre Group.

2 Recommendations

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| <ol style="list-style-type: none">2.1 Cabinet is recommended to agree the financial terms and other proposals set out in this report and to instruct Officers to progress the required updated Contract documentation with the Ambassador Theatre Group for the management and operation of the Aylesbury Waterside Theatre. |
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3 Executive summary

- 3.1 The five year review of the Aylesbury Waterside Theatre (AWT) contract with the Ambassador Theatre Group (ATG) has been conducted in accordance with the provisions of the current 15 year contract. The contract commenced in October 2010 and included a six year funding agreement which terminates on 9 October 2016 and a formal contract review in year 5. The existing contract remains in force until October 2025.
- 3.2 A comprehensive review has been conducted by a specialist Theatre and Arts Consultancy, Artservice which has looked at the original submission from ATG and the actual delivery over the last five years. The conclusion reached was that ATG has delivered a first class programme of events and productions but that it has taken considerably longer to build audiences than was expected at the time of the bid.
- 3.3 Over the last 5 years a very strong relationship has been forged between the Council and ATG. The Council recognises the important role the theatre undertakes in terms of town centre regeneration and economic benefit. Furthermore, the Council has been very happy with the quality and range of programme and events offered, consequently, officers have met with ATG senior management to negotiate more favourable terms. The full details of the contract review and the revised financial terms will also be considered by the Finance and Services Scrutiny Committee on 12 October 2015 as part of their scheduled work programme.

4 Supporting information

- 4.1 The current contract with Ambassador Theatre Group (ATG) to manage the Aylesbury Waterside Theatre (AWT) commenced on 10 October 2010 for a period of 15 years, with an option to extend the contract by a further 5 years by mutual consent.
- 4.2 The initial annual management fee payable to ATG was agreed at £350,000 p.a. with a 3% uplift each year from October 2011. The contract includes a review in year 5 to consider how the contract is performing and to review the current financial arrangements. Any agreed changes will become effective

from October 2016. There is currently no financial agreement beyond September 2016 although the contract remains in force until October 2025.

- 4.3 The Council accepts that with the world wide recession and less disposable income since 2010, it has taken ATG much longer to establish AWT in the market place and to develop audiences, group bookings and repeat business.
- 4.4 Overall, the Council is very pleased with the quality and range of programme on offer at the theatre which is as good or better than other major provincial theatres around the country.
- 4.5 Equally, the Council realises that the contract entered in to in 2010 is no longer affordable and the Council wishes to negotiate a better financial deal in the future.
- 4.6 The Council has engaged the services of a theatre consultant to help with the review and to provide independent expert advice regarding the options and opportunities. Artservice Ltd has been commissioned to review the original submission, evaluate what has been delivered and comment on the options and a suggested course of action.
- 4.7 The detailed confidential report from Artservice has been completed and is included as a confidential appendix. The Consultant's report concludes *"Despite the challenges, the Waterside Theatre programme has achieved some considerable successes and brought to Aylesbury work of the highest national and international standing, along with a string of household celebrities and performers, as well as some of the UK's finest companies and actors. In addition, it has provided a top quality amenity for the local arts, voluntary and business communities and run an extensive programme of learning and participatory activities that have reached thousands of local residents and children and young people in particular."*
- 4.8 The options of re-tender, establish a charitable trust, in house operation, partnering with an existing trust or local authority or including in a larger cultural/leisure contract have all been considered and in terms of the way forward, the report recommends *"continuation of the current agreement with ATG, via re-negotiation of the lease and terms of the management agreement is the most sensible option and will allow the Council to continue the good relationship it has built up with ATG and to build on the foundations laid in the first 4-5 years of operation. The option of granting a longer lease should be explored with a view to encouraging some capital investment in the Theatre to upgrade and re-design key areas of operation with a view to increasing income from ancillary trading, hires and events and making the second space more suitable for live arts use by amateur, community and educational organisations"*.
- 4.9 Regarding the management fee, the consultant comments *"The annual subsidy paid to ATG is in line with national average for this type of management arrangement, however there may be scope to reduce it if the Theatre can build on the encouraging estimated financial outturn for 2014/15, and if it can increase income from ticket sales and ancillary trading and events. There is a limit to how much cost cutting is advisable in flexible areas of the budget such as staffing and marketing, as cutting costs further could have a negative impact on performance and, especially on the Theatre's ability to generate increased ticket sales; to undertake commercial development function; and to increase trading income"*.
- 4.10 In terms of other operators, there are only 1 or 2 comparable theatre management companies in the market place. ATG is the accepted market

leader and is also the largest theatre management company in the world following the recent merger and financing changes. It is thought there would be little to be gained by terminating the current contract with ATG and going out to the market place.

- 4.11 Furthermore, this could result in a worse/more expensive outcome for the Council in terms of cost and quality and scope of programme offered. The best scenario is to negotiate new acceptable terms with ATG. In summary, the Council is very happy with the quality and range of service provided by ATG but wishes to renegotiate the contract on more favourable and less expensive terms.
- 4.12 The consultants report was received in June and discussed with Cllr Howard Mordue and the Director of Finance. In order to meet the contract deadlines, informal negotiations were conducted at local level between AVDC and ATG to find common ground, clarify expectations and work through various scenarios. These were discussed with Cllr Mordue and AVDC,s Director of Finance to seek agreement in principle.
- 4.13 As a result of these informal discussions, formal contract review meetings have taken place between AVDC and ATG on 25 June and 30 July 2015 and a series of joint proposals were discussed and agreed. The meetings have been very positive and ATG took away the proposals for discussion and agreement with ATG MD Rosemary Squire and other members of the board.
- 4.14 The ATG board has now considered the proposals and are in support of the joint recommendations. These proposals should be considered as a package and represent the best negotiated outcome for the Council. The details are given below;
- 4.15 **Proposals Jointly Agreed by AVDC and ATG**
- a) That AVDC continues to acknowledge and champion the theatres' pivotal role and contribution to the development of Aylesbury town centre and night time economy.
 - b) That AVDC continues to use its' best endeavours to ensure that coach drop off and pick up arrangements remain a high priority and that signage, way-marking and the public realm continue to be improved wherever practicable, for visitors, both pedestrians and by vehicles to the theatre.
 - c) That AVDC continues to work with ATG to seek affordable solutions to reduce maintenance and utility costs for mutual benefit.
 - d) To confirm the 6 year Funding Agreement from October 2016 until 31 March 2023 as detailed in the confidential appendix.
 - e) To include a formal review of the contract in year 5 (2021/22) to seek a new funding Agreement for the remaining period of the contract and any other relevant considerations at that time.
 - f) ATG will pay AVDC an agreed percentage of the gross proceeds arising from the Building Levy once ticketed admissions exceed the threshold of

250,000 p.a., payable annually in arrears in order to help with maintenance costs, as detailed in the confidential appendix.

- g) AVDC and ATG will each make an agreed annual payment to the “Special Maintenance” sinking fund in accordance with the current contract Agreement in new contract years 1 – 6, as detailed in the confidential appendix
- h) All Contract Terms and Specification to be updated to reflect date changes and to remain as now except those details referred to above or that have been previously jointly agreed during the first five years.

4.16 The AVDC negotiating team are very pleased with the outcome of the negotiations and consider that these are the best terms and outcome possible for the Council at the present time.

5 Options considered

5.1 The Contract Review has included a comprehensive report by a Theatre and Arts Consultancy, Artservice. The options of re-tender the contract, establish a charitable trust, consider in house operation, partnering with an existing trust or local authority or including in a larger cultural/leisure contract have all been considered. The option to negotiate with ATG is recommended by the Consultant.

6 Reasons for Recommendation

6.1 The negotiated new terms and financial agreement are considered the best terms available at this time and provide the Council with a much improved financial arrangement and also provide for a further review in 5 years time.

7 Resource Implications

7.1 The effect of accepting these proposals mean that the Council will reduce substantially the cost of the management fee over a tapering 5 year period This arrangement provides ongoing savings to the Council and also allows ATG to continue to build audiences and visitors to the theatre whilst ensuring a first class quality programme of events is offered to residents and visitors to the district.

Contact Officer
Background Documents

Paul Marston-Weston 01296 585116
Confidential documents and files in Leisure Services

Cabinet
1 September 2015

VALE LOTTERY

Councillor Mrs J Blake

Cabinet Member for Business Transformation

1 Purpose

- 1.1 To gain agreement to the launch of an on line Vale Lottery to help fund discretionary support to local voluntary and community sector (VCS) and to enable good causes to raise funds directly in a first for the country.

2 Recommendations

- | |
|--|
| <ol style="list-style-type: none">2.1 To recommend to Council that an online Vale Lottery be launched as detailed in the report.2.2 To delegate the final arrangements of launching the lottery to the Chief Executive in consultation with the Cabinet Member for Business Transformation. |
|--|

3 Executive summary

- 3.1 As budget pressures continues to grow on all aspects of the councils work – there will inevitably be an impact on the funding available for good causes during the medium term. The concept of an AVDC lottery has been considered for some time, with the focus on how this would be delivered, and how this could with existing funding for good causes. AVDC has historically provided substantial financial support for the VCS across the Vale, helping to deliver a number of corporate aims, and we currently distribute around £1m pa through Service Level Agreements as well as through Community Chest (ending in 2017) and other one off support. .
- 3.2 A Vale Lottery has the potential to help all organisations to address any funding pressures they are facing. The lottery proposal will help move AVDC from ‘provider to enabler’. We would be the first council in the country to run this a lottery in this form.

4 Supporting information

- 4.1 AVDC is exploring new ways of increasing income, reducing processes, bureaucracy and costs - this work is known as the New Business Model (NBM). NBM is the council’s method of addressing the financial challenges facing it over the coming years following the government’s decision to reduce the level of grant to local authorities.
- 4.2 Part of the NBM programme is considering how we can sell more services to the general public, wider public sector and private sector to increase the income position of the council. This fits with the changing business model of the council, away from the provider of all services to a more diverse model of buying and selling services, as well as the public and groups being able to ‘self help’.
- 4.3 As budget pressure continues to grow on all aspects of the councils work – there will inevitably be an impact on the funding available for good causes in the medium term. The concept of an AVDC lottery has been around for some time as a partial new source of income to help mitigate budget pressure, however the struggle with its development has been a combined one of how this would be delivered, and how it would fit with existing funding for good

causes. This report addresses these issues and provides a model for implementation of a Vale Lottery.

Lotteries – Background

- 4.4 Lotteries have long been a way of smaller organisations raising income. They are regulated by the Gambling Act 2005. There are different types of lotteries available, however in this report we are only discussing ‘society lotteries’.
- 4.5 Society lotteries are promoted for the benefit of a non-commercial society. A society is non-commercial if it is established and conducted:
- For charitable purposes
 - For the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity
 - For any other non-commercial purpose other than that of private gain
- 4.6 In all cases, lotteries have to deliver a minimum of 20% of proceeds to good causes – this report recommends a minimum of 50% of proceeds would go to good causes in the Vale Lottery. As we are a local authority we have to be licensed by the Gambling Commission.

The Lottery Market Place

- 4.7 There are three well-known national lotteries running in England and Wales – the National Lottery, Health Lottery and the Postcode Lottery. Set out in the table below are some background statistics regarding those providers for comparison.

Provider	Odds of jackpot win	Odds of any prize win	% share to good causes	% to operator/owner
Euromillions	1:116m	1:13	28%	22%
National Lottery	1:14m	1:54	28%	22%
Health Lottery	1:2m	1:209	20%	22%
Postcode Lottery	No data available		27.5%	32.5%

- 4.8 There are no Vale wide lotteries currently being delivered, and there is only one other council known to be a licensed operator in the country. There are however a number of community groups / charities who either run lotteries or lottery-like fundraising within the Vale.

Initial Proposition

- 4.9 An AVDC lottery would need to have a set of aims or unique selling point (USP) that resonate with players. We believe that there is a place for a lottery that is focused on :
- *Delivering the proceeds locally* – an AVDC lottery would deliver benefits only to local causes, unlike any other provider – players can be assured that the proceeds will stay in the Vale.
 - *Maximising benefits to the community* – To bolster support and to help in continuing the good work AVDC already does, there needs to be a significant benefit being delivered to the Voluntary & Community Sector (VCS). The proposal in this report has 58% of proceeds being given to good causes, with the additional benefit of none of the proceeds generated being taken by AVDC.

- *Minimising costs* - whatever delivery route is adopted it will need to minimise set-up costs, meaning the lottery will need to be largely self-financing, and any funding distribution mechanism should tap into existing distribution routes.
- *Delivering winners locally* – whilst anyone could play, it is likely that players will be locally based and hence it will be easier to maximise the value from winners' stories and encourage more participation
- *Facilitating a wider benefit* – whilst the lottery will help current funding of good causes, it will also enable local good causes to fundraise in partnership with us. This can be seen as the council enabling good causes to help themselves, by reducing the barriers to lottery type funding such as licensing and administration. It will also open up a way for good causes to create new links with repeat donors.
- *Helping to shift residents' perceptions* - of what AVDC can do, and is here for, in line with our commercial approach taking the authority from provider to enabler.

Proposed Form of a Lottery

- 4.10 A review of available delivery options for the lottery has been undertaken. In doing so it should be borne in mind that it is very difficult to assess the number of actual players that may take up a Vale Lottery.
- 4.11 In developing this proposal we have considered a number of variants and operating models, and have worked with different elements of the industry to deliver a product that achieves the aims set out above.
- 4.12 One overriding issue regarding the form is that the lottery will have to be online. This is due to the costs of distribution and sales in any other way. This fits with AVDC's digital approach and the lottery will be able to be accessed via desktop, mobile and tablet.
- 4.13 The suggested model would operate at two levels :

Vale Lottery – operating Vale-wide, with profits generated distributed through existing mechanisms used by AVDC to local voluntary and community organisations. Players in this option would not specify a group to benefit from the proceeds and the funds will go to existing VCS funding commitments. This will help those organisations which may have fewer local supporters and/or less ability to generate funding support due to the nature and/or size of their services.

Specific Vale Good Causes – this version of the lottery enables groups to 'sign up' to take part in the lottery specifically raising the 50% share for their good cause. By signing up they would have their own web page for the lottery helping them in engaging players and raising income. This option removes a number of hurdles for groups who might struggle to take part in their own lotteries (eg holding own license and setting up infrastructure to enable the lottery to run).

AVDC would be the overall license holder and control the good causes joining the scheme. Players buying tickets through specific web pages would know that the profits are for that specific good cause. This in turn motivates the group to gain more players to support their specific cause. This option in effect operates as an 'umbrella' scheme within the main Vale Lottery.

The council would retain some (8%) of the proceeds to help existing funding streams for the VCS, while local organisations would also have the platform to fundraise independently. Annex A sets out a draft criteria that organisations

will need to adhere to on joining the umbrella scheme, and fund allocations are set out later in the paper.

- 4.14 All sales for the lottery (no matter which version the player chooses) would operate via a dedicated website (specific good causes would have their own landing pages), and be funded via an online direct debit or payment card for tickets. This approach is needed to keep operating costs at a minimum.

Delivery Options

- 4.15 In essence the options for delivery of a lottery are either in house or through an External Lottery Manager (ELM).
- **In-house** - This option would see the setting up of the necessary posts and systems to run a lottery in-house. This has not been fully costed, but it is considered somewhere in the region of a £80-100k for set-up costs alone. This would include a lottery manager and the necessary development of software systems to enable the lottery to run.
 - **External Lottery Manager (ELM)**- This option would see a partnership with an existing deliverer of lotteries in the market place. This in effect means 'buying in' the skills and expertise of an existing provider and sharing the risk with them to deliver the lottery. The ELM will deliver all aspects of running the lottery, from ticket payments, prize management and licensing, and share with AVDC and the good causes the role of marketing.
- 4.16 Balancing the set up costs, unknown player numbers and the skills base needed to run a lottery effectively the preferred option is to use an ELM.

Ticket Price

- 4.17 During the scoping of this work, officers have been working with two competing providers to develop the exact form of the lottery. The main difference between the two providers is their ticket price model.

Provider A

- 4.18 Lottery Provider A has advised their offer is dependent on an online model, with a minimum play of one ticket per week. As this will be taken monthly and equates to a minimum monthly expenditure for the player of £4.33 (or higher should they wish to purchase multiple tickets/support multiple good causes). There is no set up cost to AVDC.

Provider B

- 4.19 Lottery Provider B has advised that they operate on a £2 per week model funded through a direct debit. This results in a monthly direct debit of £8.67. There is a compulsory start up cost to AVDC of £5,000 with this supplier.
- 4.20 Both providers operate a similar prize structure but with differing percentage splits to operator, AVDC and good causes, with provider B providing a matched jackpot prize if won, to the VCS that that player selected.
- 4.21 It is clear that selecting a ticket price will have a significant bearing on the success of the lottery. A high ticket price has the effect of reducing the administration costs, which in turn leaves more money available for the VCS

However, research¹ indicates there is a significant drop-off in the take-up rates (up to a potential 69% less participation, equating to around 50% less revenue) if a ticket is priced at £2 instead of £1. Participants who want to buy multiple tickets will have that option under the £1 model should they in any case wish to spend £2.

4.22 Officers consider that it is the research into the public perception of appropriate lottery ticket pricing that is the most significant factor to consider when selecting a preferred model for the lottery. A £2 cost would also place us in direct competition with the National Lottery.

4.23 Balancing the issue of ticket price, player take up, and set up costs it is recommended that Provider A is selected. Due diligence is currently underway with this provider in advance of a final Cabinet and Council decision.

Ticket Price, Proceeds Apportionment and Prize Structure

4.24 Based on the recommendations in this report, the Vale Lottery structure would operate as set out below :

- Ticket price - £1 per week
- Draw frequency – once per week
- 2 modes of operation:

Vale Lottery (unspecified good cause) the funds of which will be delivered through existing good cause distribution routes.

Specific Vale Good Cause directly signing up to the Vale Lottery umbrella scheme, enabling them to fundraise for their own cause within the wider Vale Lottery process.

Proceeds Apportionment				
	<i>Specific Vale Good Cause</i>		<i>Vale Lottery^A (no specific good cause)</i>	
	<i>% Allocation</i>	<i>£ Allocation per ticket</i>	<i>% Allocation</i>	<i>£ Allocation per ticket</i>
Specific Good Cause	50	£0.50	-	-
Prizes	20	£0.20	20	£0.20
Vale Lottery Good Causes ^A	8	£0.08	58	£0.58
External Lottery Provider	18	£0.18	18	£0.18
VAT	4	£0.04	4	£0.04
Totals	100	£1.00^B	100	£1.00^B

^A Vale Lottery Good Causes are those already supported through AVDC's discretionary grant funding.

^B AVDC will take no funds directly from the operation of Vale Lottery, and all proceeds will go to good causes after running costs.

¹ Respondents' answers when asked the question: "How much should a lottery ticket cost?" The survey was carried out by an independent survey provider The Leadership Factor in June 2013. The total respondent group was over 1,100 people.

Number Selection & prize structure :

Players are able to choose 6 numbers. To win the jackpot the ticket must match both the numbers and sequence as drawn. Players can also win a prize if the ticket matches the sequence of the first or last 2,3,4 or 5 numbers drawn. Multiple tickets are able to be purchased, and numbers can be changed by players. Bolt on 'raffle' type prizes are possible with this model. Players also have the option to donate their winnings to their chosen good cause if they so wish. The jackpot is an insured prize. It is a guaranteed pay out of £20,000 per winner (even if multiple people win the jackpot it is not shared or rolled over).

Number Selection and Prize Structure		
	Winning Odds	£ Prize
6 numbers	1:1,000,000	£20,000
5 numbers	1:55,556	£1,000
4 numbers	1:5,556	£100
3 numbers	1:556	£10
2 numbers	1:56	3 free tickets
Overall Odds of Winning any prize	1:50	-

Player modelling :

Set out below is a player modelling analysis. It shows that a very conservative level of players can generate a considerable income for good causes across the Vale.

£1 Ticket Price / 1 Ticket per week						
Ticket Price £	Number of players	% of AV Player Pop	Tickets bought per week	Number of weeks	Gross Return	Received by Good Causes ^c
1	721	0.5	1	52	£37,492	£21,746
1	1442	1	1	52	£74,984	£43,492
1	2163	1.5	1	52	£112,476	£65,238
1	2884	2	1	52	£149,968	£86,981
1	3605	2.5	1	52	£187,460	£108,726

^c : no distinction has been made in the above table between players selecting Vale Lottery Good Causes or Self Selecting Good Causes. It is very difficult to model how this split will break down with actual players, therefore a total to good causes is shown.

- 4.25 All day to day management will be conducted by the ELM. This includes processing new players, distributing prizes and income for good causes. The ELM will also provide significant tailored marketing support to good causes and AVDC, and assist players should they experience difficulties. The ELM will send newsletters to all good causes signing up to the lottery providing updates on their lottery. AVDC will help publicise the Vale Wide lottery and support its take up. Apart from licensing and marketing costs, the lottery will be self-funding.

Gambling Responsibly

- 4.26 Lotteries are the most common type of gambling activity across the world, and considered to be a 'low risk' form with respect to the emergence of problem gambling. This is due to its relatively controlled form. The Vale Lottery will help mitigate against many of the issues related to addictive gambling by :

- Being only playable via by pre arranged sign up and non cash methods
 - There is no 'instant' gratification or 'instant reward' to taking part
 - The lottery will be fully compliant with the Gambling Commissions licensing code of practise, which includes self exclusion and links with support organisations.
- 4.27 Due to these factors it is reasonable to believe that the Vale Lottery will not significantly increase problem gambling, and that the benefits to good causes in the Vale from the proceeds of the lottery outweigh the possible negative issues.

Delivery Timeline

- 4.28 Following agreement by Cabinet and Council key milestones in the delivery of the lottery are set out below:
- Early Sept – Decision
 - Late Sept – Launch event for VCS
 - End October – License Approved (subject to Gambling Commission)
 - Mid November – First Draw

5 Options considered

- 5.1 A number of different delivery options are considered in the report and have been taken into account in developing the recommendation.

6 Reasons for Recommendation

- 6.1 To help in addressing the budgetary pressures facing the council in the future, and to enable community groups to 'self help' by gaining access to their own lottery within the Vale Lottery umbrella scheme.

7 Resource implications

- 7.1 There will be a cost to operating the lottery. It is estimated that :
- £1,000 will be required annually for licensing and administration costs.
 - £3,000 to be allocated for marketing in the first year.
 - £5,000 worth of officer time will be required to run the lottery annually. This can currently be funded from existing resources.
- 7.2 Income from the lottery will be used to assist in funding existing commitments to the VCS. Until the level of funds being raised is known it is difficult to anticipate the levels that may be generated. An annual review will be undertaken to ensure that the lottery is running in line with the aims set out in this report.
- 7.3 As part of developing the local authority offer with the ELM, it is proposed that AVDC will receive 1% gross of any other lottery sales set up in the same way across the country by other local authorities. This will come from the ELM's operator share and hence no funds to good causes will be lost in these other areas. This does not apply to the Vale Lottery and hence all proceeds will go to good causes in their entirety.

Contact Officer Andy Barton 01296-585430
Background Documents n/a

ANNEX A – Draft Criteria for Acceptance into the Umbrella Vale Lottery Scheme

As part of the proposed Vale Lottery we are enabling good cause groups to sign up under our umbrella lottery scheme. Set out below are a set of draft criteria that will be used in deciding whether or not to allow groups to operate under AVDCs Lottery License and we need to ensure that any license conditions are adhered to.

Criteria for joining the Vale Lottery – Good Causes Lottery :

We want to enable as many organisations as possible to join the good causes lottery under the Vale Lottery. As you will be joining under our overall gambling license (Gambling Act 2005) we have to ensure that organisations meet certain criteria. There is no application fee.

Your organisation must :

- Provide local community activities or services *within* Aylesbury Vale, which are of benefit to *residents of Aylesbury Vale* - visitors to Aylesbury Vale may also benefit from the services/facilities, but not to the exclusion of local residents
- Has a formal constitution or set of rules
- Has a bank account requiring at least 2 unrelated signatories
- Operates with no undue restrictions on membership

And be either :

- A constituted group with a volunteer **management committee** with a minimum of three unrelated members that meets on a regular basis (at least 3-4 times per year)
- **A registered charity, with a board of trustees**

Or :

- Is a registered **Community Interest Company**, and provides copies of their Community Interest Statement, details of the Asset Lock included in their Memorandum and Articles of Association, and a copy of their latest annual community interest report.

We Will Not Permit Applications that :

- promote activities/groups promoting a particular religious or political belief
- from organisations that do not do work within the boundaries of Aylesbury Vale
- Individuals
- Organisations which aim to distribute a profit
- Organisations with no established management committee/board of trustees (unless a CIC)
- Incomplete applications

The council reserves the right to reject any application.

The council will reserve its rights to not accept or cease to license any organisation with a minimum of 7 days notice for any reason, unless where fraudulent or illegal activity is suspected where cessation will be immediate.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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